Petition

81-1917

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1981

COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff-Petitioner,

against

NIEVES RODRIGUEZ, an infant under the age of 14 years, by ROSA RODRIGUEZ, her mother and natural guardian, and ROSA RODRIGUEZ and LOUIS PADILLA,
Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented.

1. Is the decision of the New York State Court of Appeals correct when based on speculation rather than existing facts, the absence of which facts interfere with the express intention of the New York and North Carolina statutory provisions regarding insurance requirements of interstate travelers, and in so doing, violates express contractual insurance provisions and the insureds' right to travel freely between and among the states and is violative of Article I, Section 8, clause 3 of the United States Constitution ("Commerce Clause") and the Ninth and Fourteenth Amendments, and beyond the power of that Court pursuant to Article I, Section 6 of the New York Constitution.

2. Is the decision of the New York State Court of Appeals correct in its affirmance of the lower courts' determination that the agreement by contract between insurer and insured providing for a specified indemnity for excess out-of-state coverage when such determination interferes with the parties' right to contract and is violative of Article I, Section 10, clause 1 of the United States Constitution.

Parties.

All parties to the action are named in the caption.

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IN THE

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OCTOBER TERM, 1981.

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff-Petitioner,

against

NIEVES RODRIGUEZ, an infant under the age of 14 years, by Rosa Rodriguez, her mother and natural guardian, and ROSA RODRIGUEZ and LOUIS PADILLA,

Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS.

PETITION FOR A WRIT OF CERTIORARI.

Opinions Below.

The majority and dissenting opinions and the decision of the New York Court of Appeals affirming the split decision of the New York State Supreme Court Appellate Division, First Department appears at pages 1a to 13a of the attached Appendix and is reported at 55 N.Y. 2d 162, ____ N.Y.S. 2d _____, _____ N.E.2d _____ (1982).

The majority and dissenting opinions of the New York State Supreme Court Appellate Division, First Department affirming the Order of New York Supreme Court granting Defendants-Respondents' motion for Summary Judgment appears at pages 14a to 21a of the attached Appendix and is reported at 80 A.D.2d 130, 437 N.Y.S.2d 674, _____ NE.2d _____ (1st Dep't 1981).

The opinion and decision of the N.Y. Supreme Court, Special Term, Bronx County granting Summary Judgment appears at pages 22a to 25a of the Appendix attached hereto and is reported at 103 Misc. 2d 906 (Sup. Ct. S.T. Bronx Co. 1980).

Jurisdiction.

The decision of the N.Y. Court of Appeals was rendered on February 18, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3). The provision of 28 U.S.C. §2403(b) may be applicable although no Court below has certified to the State Attorney General the fact that the constitutionality of any applicable state statute was drawn in question.

Constitutional And Statutory Provisions Involved.

United States Constitution:

Article 1, Section 8, clause 3:

The Congress shall have Power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article 1, Section 10, clause 1:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Ninth Amendment:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution:

Article 1, Section 6:

See Appendix at 26a-27a

Article 6, Section 3, clause 7:

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N.C. General Statutes §20-309 (Vehicle Financial Responsibility Act of 1957)

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Statement of the Case.

A. Facts:

On August 15, 1977 Padilla, a New York resident, was the owner and operator of an automobile registered and garaged in New York and insured in New York by the petitioner. On that date, the infant Rodriguez and her mother, both New York residents, were passengers in the Padilla vehicle when it was involved in an accident while passing through North Carolina in transit round trip between New York and Florida.

Thereafter, Rodriguez commenced an action for personal injury damages in New York State Supreme Court (Bronx County) which resulted in a judgment in favor of the Plaintiff Rodriguez in the amount of $100,000.00, apportioned against the petitioner's insured in the sum of $60,000.00. At the time of the accident, New York required its residents to maintain liability insurance generally in the minimum amounts of $10,000/$20,000 while North Carolina required of its residents liability insurance in the minimum amounts of $15,000/$30,000[1]. The Plaintiff Rodriguez demanded that the measure of petitioner's liability be $15,000.00, the amount set by North Carolina for its residents rather than the lesser $10,000.00 accorded by the New York requirements under which petitioner's policy had been written, on the sole basis of the accident's location in North Carolina.

Petitioner brought this action for declaratory judgment that its limit of liability be adjudged to be $10,000.00 rather than $15,000.00 and that in the event of an adverse

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[1] This generally stated requirement refers to $10,000 for any one injury and $20,000 for any one accident.

determination that it have indemnity from its insured for the excess over $10,000.00 in accordance with a provision allowing such in its policy. Plaintiff, Rodriguez moved for summary judgment declaring the policy limit to be $15,000.00 and dismissing the Complaint.

Supreme Court, Bronx County (Klein, J.) granted summary judgment to the Plaintiff Rodriguez adjudging that petitioner afforded its insured liability insurance coverage in the sum of $15,000.00 and dismissed petitioner's Complaint, stating that New York State Insurance Law §672(5) made the North Carolina statutory provisions applicable and implicitly therefore found the North Carolina statutory provisions required insurance in the minimum amount of $15,000.00 for non-residents involved in an accident in North Carolina. The Court also dismissed petitioner's action for indemnity stating that an insurer may not seek indemnity from its insured.

The state Supreme Court Appellate Division, First Department affirmed by a divided Court. The majority concluded that the expression and intent of New York Insurance Law §672(5) was to have higher coverage (in this case North Carolina) apply and that the North Carolina Statute required residents and non-residents alike to be insured for an amount not less than $15,000.00. The dissent however, found upon careful reading that the applicable North Carolina statutes exempted from their coverage a New York registered car on a temporary trip through North Carolina and not previously involved in an accident in North Carolina, thus rendering consideration of any North Carolina minimum inapplicable.

The New York Court of Appeals affirmed by divided Court. The majority, while in effect conceding that on the facts of this case there was no provision for raising the

New York limits of coverage pursuant to the existing statutory scheme, in affirming did so by judicial fiat decreeing that the intent of the statutory provisions required such a result. The dissent, agreeing in substance with the Appellate Division dissent, found neither statutory nor factual basis for interfering with the established New York limits of liability coverage, for there was no circumstance under which the statutory provisions allowed consideration of the application of the higher North Carolina limits to this motor vehicle accident.

B. Preservation of Issues.

Petitioner first raised issues relating to the "Commerce Clause" and Ninth Amendment by arguments of restriction on freedom of interstate travel in their papers opposing the original motion for summary judgment (Appendix at 45a to 56a) which position was continued and amplified through the notices of appeal and briefs in the Appellate Division and Court of Appeals (Appendix at 57a to 63a) as well as in oral argument. These issues were not directly discussed by either Court, although the decisions reached are inconsistent with them.

Petitioner's position regarding deprivation of due process was first made and preserved by notice of appeal in the Appellate Division and continued in the Court of Appeals. Again neither Court directly addressed the issue in this terminology but their decisions are inconsistent with due process.

Finally, petitioner first raised the issue of interference with contract in its papers opposing the original summary judgment motion and continued through the Appellate Division and Court of appeals briefs (Appendix 45a to 56a) as well as in oral argument. The Courts denied relief based on this theory.

REASONS FOR ALLOWANCE OF WRIT.

POINT I.

The Court of Appeals' substitution of its judgment based on speculation instead of the express requirements of the statutory scheme resulted in the imposition of greater liability to petitioner than actually provided by statute or contract and deprived petitioner of property without due process of law.

The insurance policy issued by petitioner was subject to the applicable provisions of the New York Insurance Law §672(5) which provides:

> Every owner's policy of liability insurance issued in satisfaction of articles six or eight of the vehicle and traffic law shall also provide, when a motor vehicle covered by such policy is used or operated in any other state or in any Canadian province, insurance coverage for such motor vehicle at least in the minimum amount required for such vehicle by the laws of such other state or Canadian province.

On its face, the provision requires that when a vehicle such as the one at bar ("a motor vehicle covered by such policy") operates in any other state (North Carolina), the insurer (petitioner) shall provide coverage in the amount of $10,000.00, unless the laws of another state (North Carolina) *require* a larger amount. A brief review of the North Carolina Statutes reveals that there was no such requirement applicable at bar, the absence of which makes the Court of Appeals determination without lawful basis contravening the petitioner's rights protected by the Fourteenth Amendment.

Generally speaking, a liability insurance policy proving the stated minimum financial responsibility was a prerequisite to registration of a motor vehicle in North

Carolina. (N.C. G.S. §20-309). Registration of all motor vehicles operated in North Carolina was required unless specifically exempted. (N.C. G.S. §20-50(a)). Applicable at bar, however, *is* a specific exemption for those vehicles registered in another jurisdiction where there is a reciprocity agreement to that effect or the other jurisdiction grants the same exemption to vehicles registered in North Carolina. (N.C. G.S. 20-4.8).

New York Vehicle and Traffic Law §250(1) provided such an exemption, creating the requisite reciprocal waiver between states. Thus, since the petitioner's insured had his vehicle properly registered in New York, a state exempting North Carolina (and other states) residents from New York registration requirements of vehicles properly registered in their home state, by operation of the mirror North Carolina Statute (§20-4.8) the petitioner's insured's vehicle was exempt from the general registration and financial security requirements at North Carolina. Thus, the $15,000 minimum insurance for *registered* vehicles was entirely inapplicable.

The only other North Carolina provision of any impact was N.C. G.S. §20-279.5(b) which provided not for liability insurance coverage requirements *per se,* but the mechanism for driving privilege suspension for out-of-state operators who had already been involved in an accident in North Carolina. In essence that section provided that where a non-resident vehicle had already been involved in an accident in North Carolina resulting in bodily injury, death or damage in excess of $200 the North Carolina Commissioner of Motor Vehicles could in his discretion, issue a suspension of driving privileges if certain conditions had been met, but could restore those privileges upon deposit of a "sum so determined by the Commissioner".

It must be emphasized that nowhere in this collateral scheme is the requirement of liability coverage of the amount $15,000/$30,000 required. Even if the circumstances came into play, the allowable sanction, suspension of driving privileges, was conditional[2] and was not the imposition of minimum insurance coverage after the fact. There was no proof, nor could there have been proof that this New York vehicle had a prior accident in North Carolina or that the Commissioner invoked his right to suspend the driving privileges of petitioner's insured or set a requirement of security deposit.

In the absence of the condition precedent to this exception's application, there was absolutely no provision in the North Carolina Statutes enlarging New York's requirements for liability insurance coverage applicable to non-resident operators. As such, any enlargement must have resulted in a deprivation of the petitioner's property without due process, for the result advocated by the majority in the New York Court of Appeals was unreasonable and unfounded.[3]

The Majority's expression of rationale can be found in the following portions of their opinion (Appendix 6a):

> *True, New Yorkers driving through North Carolina do not have to meet the State's registration requirements* (see fn 1, *supra*). *But this is the beginning* and not the end of possible penalties, sanctions and forfeitures to which other provisions

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[2]The condition, as stated, was requirement of a security deposit in some discretionary sum, not even a requirement of $15,000. In fact, N.C. G.S. §20-279.6 allowed discretion to be exercised without requiring security.

[3]This is exactly the position taken by the dissent and found in the Appendix at 8a-13a.

> of the North Carolina statutes expose them. *For, in the event of an accident, a series of alternatives which can be most onerous*[4] for the nonresident owner or operator *are set in motion.* In such circumstances, Article 9A of the Motor Vehicle Law of North Carolina, entitled "The Motor Vehicle Safety and Financial Responsibility Act of 1953", mandates that the operating privileges of the nonresident owner or operator involved be suspended (NC General Statutes, §20-279.5(b); see, generally, *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 NC 47). *Unless*[5] *the Commissioner of Motor vehicles receives satisfactory evidence* within 20 days after receipt of an accident report that a formal release, settlement or adjudication of nonliability has been obtained (no doubt a rare accomplishment in so short a time span), *avoidance of suspension hinges on the ability of a driver to deposit such sum, up to $15,000* for one person's injury or death or $30,000 for any one accident, as the Commissioner finds sufficient to secure payment of judgments for any damages (see NC General Statutes, §20-279.5(a) and 20-279.9). (emphasis added)

and later (Appendix at 7a):

> *As a practical matter then, the "exemption" of nonresident vehicles by North Carolina, while technically possible, is hardly short of illusory. For,*

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[4] They may be onerous, in some respects, but they do not involve the imposition on nonresidents of a $15,000 minimum liability insurance coverage.

[5] The majority's phrasing invites inference that the deposit discussed is automatic, rather than conditional, and discretionary in a North Carolina official.

> *the net result is that, although North Carolina, strictly speaking, does not require nonresidents to carry insurance in the limits prescribed by it ab initio, in the end the nature of its overall plan is such that* any State concerned with shielding its motorists, as New York obviously was when it adopted section 672(5), *could hardly have failed to insist on the ultimate security of the North Carolina insurance limits*[6] within the out-of-State protection it mandated. It therefore would be unrealistic in the extreme to suppose, as to the appellant here would have us do, that our Legislature intended instead to subject the hundreds of thousands of its motor vehicle owners who drive across State lines each year to the other burdens. (emphasis added)

and later (Appendix at 8a):

> *Nor are we moved to any different determination in this case because, for unexplained reasons, be they intentional or inadvertent in character, the North Carolina Commissioner of Motor Vehicles here did not exercise the right to suspend or fix the amount of security.* The obvious answer to this contention is that the risks contemplated by section 672(5) were those envisioned in prospect, nor in retrospect. (emphasis added)

Such rhetoric may not replace the substantive foundation we believe our Constitution requires prior to the intervention by the judiciary in the legislative function. In essence what this language rationalized was the in-

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[6]The fact is, North Carolina *did* fail to insist and its failure should not be subject to the review of New York, imposing its own insistence on North Carolina.

terference of the New York Court of Appeals in the petitioner's contract and the affairs of North Carolina by substituting a policy decision of the majority for the discretionary action and judgment vested in the North Carolina Commissioner of Motor Vehicles, as determined by the North Carolina legislature. Contrary to the majority's "obvious answer," the North Carolina Commissioner's failure to act foreclosed the question.

This decision is particularly troublesome in light of the factual setting indicating that the expectation of the parties would undoubtedly dictate that New York Law and thus its limits of liability coverage would apply in the choice of law situation for all of the contacts of the parties lay in New York, other than the entirely fortuitous *loci delictus,* which, of itself did not raise any special interest of North Carolina in having its laws apply.

Finally, the New York Court of Appeals decision is at odds with North Carolina decisions interpreting their own statutory provisions, *See Faizan v. Grain Dealers Mutual Insurance Co.,* 254 N.C. 47, 52-54. Such a discrepancy is indicative if just how far the majority of the Court of Appeals had to go in reaching its determination, beyond that which was warranted, or allowed by its jurisdictional grant in N. Y. Const. Art. 6, §3, cl. 7.

POINT II.

The decision below interferes with and has a chilling effect on the right to freely travel and conduct interstate commerce such that the Commerce Clause should be invoked to restrain the limitation.

This Court has always recognized the right of our citizens to travel from and through one State to another, *see U.S. v. Guest,* 383 U. S. 745, 757 (1966). While this Court has at different times emphasized different sources for this right of free interstate travel, the very purpose of it as a fundamental part of our Federal system, *The Passenger Cases,* 7 How. 283, 492 (1849) and suggests that it is one of the rights reserved to the people through the Ninth Amendment, *see Griswold v. Connecticut,* 381 U.S. 479, 490-492 (1965); *compare Roe v. Wade,* 410 U.S. 113 (1973). The rationale is likewise clear for the preservation of federal commerce and thus finds a basis in the "Commerce Clause" of Article I, Section 8 of the Constitution, as well as the Fourteenth Amendment. *Shapiro v. Thompson,* 394 U. S. 618, 642-643 (1969) (Stuart, J. concurring); *Griffin v. Breckenridge,* 403 U. S. 88, 105-106 (1971); *Twining v. New Jersey,* 211 U. S. 78, 97 (1908). Regardless of its source, the right to freely travel is undeniably a fundamental one. *U.S. v. Guest, supra.*

Certainly there is no question that the amount of interstate travel by both commercial and non-commercial motor vehicles is immense. This was a fact of which the New York Court of Appeals took special note (Appendix at 7a). The insured owners or drivers making these interstate trips have the expectation that having complied with the Vehicle and Traffic Law of their State (in this case, New York) their right to travel anywhere thoughout the United States is unrestricted. They could not conceive that their New York policies ambulate elsewhere to pro-

vide required coverage under the financial responsibility laws of other states through which they may fortuitously pass, inconsistent with their own, thus compelling other levels of insurance coverage for which they have not bargained, despite their non-resident status. They may be aware that in such other states they may be guility of and therefore liable for their negligence to citizens of other states, but the freedom to unrestricted travel must imply to them that the satisfaction of their home state requirements is sufficient for them to lawfully qualify to travel in the other states.

Looking on the other side as well, the insurer who gratuitously or for a nominal or unrated premium properly incorporates the requirement of N.Y. Insurance Law §672(5) may now, according to the N.Y. Court of Appeals, find itself in the untenable position that its policy involuntarily may be reformed to express higher liability limits not contemplated by the premium exacted or required by the sister state through which its insured passes. The inevitable result is that the millions of insurance consumers who contemplate interstate travel will have to pay a disproportionate premium not tied to any concrete requirement but rather acting as a speculative tax penalizing the contemplated interstate travel.

In the well known opinion in *Gibbons v. Ogden,* 9 Wheat. 1 (1824) Chief Justice Marshall wrote concerning the regulation of commerce stating: "Commerce undoubtedly is traffic, but it is something more—it is intercourse." This expansive definition soon came to allow interstate regulation of the passage of many items, including people. From this application of the language we may fairly conclude that the regulation aspect of the Commerce Clause was meant to inject a restraining force upon the conduct of the several states so that their limited territorial

views do not interfere with needs reaching across state boundaries, such as the freedom to travel interstate.

Thus, while we may with some certainty perceive that North Carolina, like any other state, is entitled *ab initio* to impose upon owners and drivers of vehicles registered in other states the obligation of carrying specified liability insurance coverage as a condition to the use of its highways, that conditioned use must be express and consistent with the owners ability to freely travel. At bar, North Carolina has chosen not to impose such a condition, perhaps to encourage its thriving tourist business, perhaps for other reasons. The reasons themselves, whatever they may be, are not important. What is important is that the evaluation of those reasons and determination of their effect is for North Carolina to decide, not New York. A decision such as the one at bar has a chilling effect on freedom of interstate travel not only in a practical way, but in the long term ramification of allowing states' imposing their individual judgment on the conduct of another, interfering with the individual state function within the federal plan.

It is just such a situation for which the invocation of the "Commerce Clause" provides a mechanism for review and restraint by this Court on individual state action which is disruptive of the flow of commerce, in this case by freedom of interstate automobile travel, and the proper role of sister states' regulating the conduct of the other's affairs.

POINT III.

The affirmance of the lower court's order granting dismissal of petitioners action for indemnity for the excess between its policy of coverage and the higher North Carolina limits as inconsistent with N.Y. Ins. Law §672(5) amounted to an unconstitutional impairment of contract in violation of Article I, Section 10, paragraph 1 of the Constitution.

The insurance contract in question contained the following provision:

> Financial Responsibility Laws: When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

The insurance contract, in whatever form is acceptable to the state, provides the financial responsibility and thus the leverage required by public policy. The essence of the reimbursement clause in question is that Padilla would repay petitioner for any payment made by the petitioner which it would not have been required to make under the policy, in excess of the coverage it had undertaken, but which it must pay by statutory compulsion of a guaranty of financial responsibility (as opposed to requirement of

actual coverage) over that required by the terms of the policy.

Insurance is written to cover a variety of risks and/or a combination of risks. As between the insurer and the insured, both parties were at liberty to contract for insurance covering the risks which they saw fit to cover. They were bound by the terms of what they contracted or it is elementary that our Courts may not rewrite that contract, as long as the contract provides what the state requires, namely, guaranty of financial responsibility.

Having specifically provided the *method* of coverage, however, the intent of the parties was therefore certainly made by express provision. Thus, there is no theoretical or practical reason why the parties' choice of method, i.e., suretyship, for satisfying the requirements of proof of responsibility should not be accepted. To do otherwise was an unconstitutional impairment of the parties' contract rights to choose the instrument defining their relationship.

Conclusion.

By reason of the immense adverse impact on interstate travel and the national insurance industry that the unwarranted and unfounded decision of the New York Court of Appeals will have and the national scope of said decision, and for the other reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Appendix

COUNTRY-WIDE INSURANCE COMPANY, Appellant, v NIEVES RODRIGUEZ, an Infant by ROSA RODRIGUEZ, Her Mother and Natural Guardian, et al., Respondents.

Argued January 5, 1982; decided February 18, 1982

SUMMARY

APPEAL from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered April 9, 1981, which affirmed, by a divided court, an order and judgment (one paper) of the Supreme Court at Special Term (MARTIN B. KLEIN, J.; opn 103 Misc 2d 906), entered in New York County, (1) granting defendants Rodriguez' motion for summary judgment, (2) dismissing the complaint, and (3) declared that the plaintiff afforded defendant Padilla automobile liability insurance coverage in the sum of $15,000 in connection with the judgment recovered by defendant Nieves Rodriguez.

The plaintiff, Country-Wide Insurance Company, is the liability carrier under a policy issued to defendant Louis Padilla on a passenger car registered to him in New York. The liability limits are $10,000 for injuries to any one person and $20,000 for all persons injured in a single accident, the minima required by the New York Insurance Law. While the policy was in force, Padilla was driving his automobile in North Carolina when he was involved in a collision in which one of his passengers, Nieves Rodriguez, an infant, was injured. There followed a suit in New York Supreme Court by young Rodriguez and her mother against Padilla and defended by Country-Wide. It eventuated in the entry of a $100,000 judgment for the child. Country-Wide, joining the child, the mother and Padilla as defendants, sought a declaration that the limit of its obligation is to pay $10,000 towards the satisfaction of the judgment and not $15,000 the minimum insurance limit generally provided for injury to one person under North Carolina's compulsory statutory scheme. By way of alternative relief, Country-Wide asks that, in the event of an unfavorable determination, Padilla indemnify it for the $5,000 differential. Special Term declared that the policy afforded the $15,000 coverage, and the Appellate Division affirmed.

The Court of Appeals affirmed the order of the Appellate Division, holding, in an opinion by Judge FUCHSBERG, that an automobile liability insurer is obligated to pay the minimum insurance limit provided for injury under the compulsory statutory scheme of a sister State or Canadian province where a New York driver and passenger are involved in a vehicular accident in a sister State or Canadian province, regardless of whether that limit is higher than the minimum amount of insurance coverage required in New York State, inasmuch as subdivision 5 of section 672 of the Insurance Law mandates that the compulsory liability coverage required of the owner of every New York automobile include insurance coverage at least in the minimum amount required for such vehicle by the laws of any other State or Canadian province when the vehicle is used or operated in such foreign jurisdiction.

Country-Wide Ins. Co. v Rodriguez, 80 AD2d 130, affirmed.

HEADNOTE

Insurance — Automobile Liability Insurance

An automobile liability insurer is obligated to pay the minimum insurance limit provided for injury under the compulsory statutory scheme of a sister State or Canadian province where a New York driver and passenger are involved in a vehicular accident in a sister State or Canadian province, regardless of whether that limit is higher than the minimum amount of insurance coverage required in New York State, inasmuch as subdivision 5 of section 672 of the Insurance Law mandates that the compulsory liability coverage required of the owner of every New York automobile included insurance coverage at least in the minimum amount required for such vehicle by the laws of any other State or Canadian province when the vehicle is used or operated in such foreign jurisdiction.

POINTS OF COUNSEL

Bernard Samuels and *Eric M. Alderman* for appellant. I. North Carolina had no provision for minimum liability coverage of $15,000/$30,000 for a properly registered and insured New York automobile in compliance with New York Motor Vehicle and Traffic Law and, therefore, subdivision 5 of section 672 of the Insurance Law was not applicable to this case. II. Should this court agree with appellant's position in point I that North Carolina law provided no basis for reformation of plaintiff's New York insurance policy to any higher amount than was specified therein as being required pursuant to subdivision 5 of

section 672 of the Insurance Law, it should nevertheless proceed to interpret that statute as an exception to the doctrine of mootness. In such event the statute should be construed as imputing and continuing the words "when applicable in accordance with New York law as opposed to those of another State". (*Matter of Hearst Corp. v Clyne,* 50 NY2d 707; *Central Hanover Bank & Trust Co. v Commissioner of Internal Revenue,* 159 F2d 167; *Auten v Auten,* 308 NY 155; *Neumeier v Kuehner,* 31 NY2d 121; *Farber v Smolack,* 20 NY2d 198; *Miller v Miller,* 22 NY2d 12; *Wierbinski v State Farm Mut. Auto. Ins. Co.,* 477 F Supp 659; *Mindell v Travelers Ind. Co.,* 46 AD2d 263.) III. Assuming *arguendo* that the coverage provisions of North Carolina law apply, the pertinent insurance contract provision is nothing more than a guarantee by the insurer of financial responsibility of its insured with a concomitant indemnity agreement running from the insured to the insurer. (*MacArthur Bros. Co. v Kerr,* 213 NY 360; *Reitz v Mealey,* 314 US 33; *Kesler v Department of Public Safety,* 369 US 153; *Perez v Campbell,* 402 US 637; *Standard Acc. Ins. Co. of Detroit v Solomon,* 195 Misc 48; *Travelers Ins. Co. v Russo,* 155 Misc 589; *Stuyvesant Ins. Co. v Renaldo,* 41 Misc 2d 285; *Bakker v Aetna Life Ins. Co.,* 148 Misc 162, 240 App Div 880, 264 NY 150.)

Seymour Berkowitz and *Richard Godosky* for respondents. Subdivision 5 of section 672 of the New York State Insurance Law and the purpose and intent of the Legislature in enacting the aforesaid legislation should be the determining factor in interpreting the legislation and dispositive of the issue of the amount of the insurance coverage afforded under the policy issued by plaintiff-appellant. (*Mindell v Travelers Ind. Co.,* 46 AD2d 263, 38 NY2d 815; *Wierbinski v State Farm Mut. Auto. Ins. Co.,* 477 F Supp 659.)

OPINION OF THE COURT

FUCHSBERG, J.

This appeal calls upon us to construe subdivision 5 of section 672 of our Insurance Law, which mandates that the compulsory liability coverage required of the owner of every New York automobile include "insurance coverage

for such motor vehicle at least in the minimum amount required for such vehicle by the laws of [any] other state or Canadian province" when the vehicle is "used or operated" in such foreign jurisdiction; in substance, Insurance Department regulations have implemented this provision by reading it into every owner's policy (11 NYCRR 60.1 [e]). In applying subdivision 5 to the present case, of necessity we also must examine the pertinent laws of North Carolina, the State in which the events which led to this controversy arose.

The plaintiff, Country-Wide Insurance Company, is the liability carrier under a policy issued to defendant Louis Padilla on a passenger car registered to him in New York. The liability limits, broadly stated, are $10,000 for injuries to any one person and $20,000 for all persons injured in a single accident, the minima required by subdivision 2-a of section 167 of the Insurance Law. While the policy was in force, Padilla was driving his automobile in North Carolina when he was involved in a collision in which one of his passengers, Nieves Rodriguez, an infant, was injured. There followed a suit in Supreme Court, Bronx County, by young Rodriguez and her mother against Padilla and, as called for by the policy, defended by Country-Wide. It eventuated in the entry of a $100,000 judgment for the child.

In the present action, Country-Wide, joining the child, the mother and Padilla as defendants, seeks a declaration that the limit of its obligation is to pay $10,000 towards the satisfaction of the judgment and not $15,000, the minimum insurance limit generally provided for injury to one person under North Carolina's compulsory statutory scheme (see NC Gen Stats, §§ 20-309, 20-279.1, subd [11]). By way of alternative relief, Country-Wide asks that, in the event of an unfavorable determination, Padilla indemnify it for the $5,000 differential.

On cross motions for summary judgment, Special Term granted defendants Rodriguez' motion, dismissed Country-Wide's complaint, inclusive of its quest for indemnity, and declared that the policy afforded the $15,000 coverage (103 Misc 2d 906). The Appellate Division, one Justice dissenting, has since affirmed, essentially on the simple proposi-

tion that our statute "has chosen to adopt the North Carolina minimum" (80 AD2d 130, 133).

On Country-Wide's further appeal, taken pursuant to CPLR 5601 (subd [a], par [i]), it presses its arguments, *inter alia*, that North Carolina exempts nonresident vehicles, i.e., those not registered in North Carolina, from its compulsory insurance requirements;[1] that subdivision 5 of section 672 is concerned with financial security and not liability coverage; that, since the passengers and their host were all New York residents, whose relationships and expectations were determined in New York, and since their presence in North Carolina as they were passing through that State at the time of the accident was fortuitous, the need to apply subdivision 5 of section 672 was obviated; that, in any event, since there was no proof that any sanctions, whether by way of the imposition of security or suspension of driving privileges or otherwise, were ever levied on Padilla by North Carolina as a consequence of the accident, that State's minimum limits, assuming they were within the scope of subdivision 5 of section 672, never came into play; and that, though its assured, under the policy's surety clause, would have to reimburse Country-Wide for any obligation it might undertake by using its New York minimum policy as proof of nonresidential financial responsibility, its obligation to make it available in the first instance constituted compliance with North Carolina law. For the reasons which follow, we nevertheless conclude that the result reached by the Appellate Division should be upheld.

Our analysis first focuses on subdivision 5 of section 672 of the Insurance Law, which was part of the complex of statutes which came into existence with the enactment of the New York "No-Fault Law" (L 1973, ch 13, § 1). These statutes, as did others of the same ilk which have proliferated in almost every State since the 1960's, reflected a felt need to provide a more adequate and efficient system of

1. This point is based at least in part on the reciprocity inherent in the interplay of section 20-4.8 of the North Carolina General Statutes and subdivision 1 of section 250 of the New York Vehicle and Traffic Law. The North Carolina statute exempts from its registration requirements vehicles properly registered in another jurisdiction so long as the foreign jurisdiction grants like exemptions to vehicles registered in North Carolina. The New York statute does so provide.

financial responsibility for compensating victims of automobile accidents (see *Montgomery v Daniels*, 38 NY2d 41, 50). It therefore would be unthinkable to assume that our legislators were not conscious of and concerned with the hazards the owners and other occupants of New York automobiles would face when they ventured into States (or Canadian provinces) whose laws specified different, and perhaps higher, minimum liability levels (see, generally, Conrad, Morgan, Pratt, Jr., Voltz and Bombaugh, Automobile Accident Costs and Payments [Univ of Mich Press]).

Turning to the North Carolina statutes, we immediately observe that, as a prerequisite for registration of a motor vehicle, an owner must certify to financial responsibility (NC Gen Stats, "Vehicle Financial Responsibility Act of 1957", § 20-309, subd [a]). Such certification requires proof either of a liability insurance policy or a qualitatively equivalent security deposit or self-insured status, each designed to meet the quantitative minimum liability limits of $15,000/$30,000 (NC Gen Stats, § 20-309, subd [b]; § 20-279.1, subd [11]).

True, New Yorkers driving through North Carolina do not have to meet the State's registration requirements (see n 1, *supra*). But this is the beginning and not the end of possible penalties, sanctions and forfeitures to which other provisions of the North Carolina statutes expose them. For, in the event of an accident, a series of alternatives which can be most onerous for the nonresident owner or operator are set in motion. In such circumstances, article 9A of the Motor Vehicle Law of North Carolina, entitled "The Motor Vehicle Safety and Financial Responsibility Act of 1953", mandates that the operating privileges of the nonresident owner or operator involved be suspended (NC Gen Stats, § 20-279.5, subd [b]; see, generally, *Faizan v Grain Dealers Mut. Ins. Co.*, 254 NC 47). Unless the Commissioner of Motor Vehicles receives satisfactory evidence within 20 days after receipt of an accident report that a formal release, settlement or adjudication of nonliability has been obtained (no doubt a rare accomplishment in so short a time span), avoidance of suspension hinges on the ability of a driver to deposit such sum, up to $15,000 for one person's injury or death or $30,000 for any one accident, as the

commissioner finds sufficient to secure payment of judgments for any damages (see NC Gen Stats, § 20-279.5, subd [a]; and § 20-279.9).

Most significantly, possession of a liability policy circumvents all this license suspending and security posting, only "provided, however, *every* such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident" (NC Gen Stats, § 20-279.5, subd [c] [emphasis added]), such coverage, of course, being, to track our subdivision 5 of section 672, "the minimum amount required for such vehicle by the laws of [North Carolina]". (See, also, NC Gen Stats, § 20-279.20, subd [a], par [2], which mandates that the nonresident's certificate of financial responsibility provided by a carrier state that the policy "shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein".)

As a practical matter then, the "exemption" of nonresident vehicles by North Carolina, while technically possible, is hardly short of illusory. For, the net result is that, although North Carolina, strictly speaking, does not require nonresidents to carry insurance in the limits prescribed by it *ab initio*, in the end the nature of its over-all plan is such that any State concerned with shielding its motorists, as New York obviously was when it adopted subdivision 5 of section 672, could hardly have failed to insist on the ultimate security of the North Carolina insurance limits within the out-of-State protection it mandated. It therefore would be unrealistic in the extreme to suppose, as the appellant here would have us do, that our Legislature intended instead to subject the hundreds of thousands of its motor vehicle owners who drive across State lines each year to the other burdens.

Also, in light of the overriding purpose of subdivision 5 of section 672, whether the potential liabilities of the appellant stem from the financial security or compulsory insur-

ance sections of North Carolina law or from a combination of both, is, at best, a consideration of form rather than substance. And, as to the appellant's surety clause contention, it seems especially inconsistent with the language of subdivision 5 of section 672 to suggest that our Legislature ever intended to impose ultimate personal liability on New York drivers for the differential between our minimum limits and those of foreign jurisdictions, be it $5,000 or even more.[2]

Nor are we moved to any different determination in this case because, for unexplained reasons, be they intentional or inadvertent in character, the North Carolina Commissioner of Motor Vehicles here did not exercise the right to suspend or fix the amount of security. The obvious answer to this contention is that the risks contemplated by subdivision 5 of section 672 were those envisioned in prospect, not in retrospect.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

MEYER, J. (dissenting). Because the majority's holding misconstrues both the New York and the North Carolina statutes, I respectfully dissent.

Subdivision 5 of section 672 of the Insurance Law requires that "Every owner's policy of liability insurance issued in satisfaction of articles six or eight of the vehicle and traffic law shall also provide, when a motor vehicle covered by such policy is used or operated in any other state or in any Canadian province, insurance coverage for such motor vehicle at least in the minimum amount required for such vehicle by the laws of such other state or Canadian province." In total disregard of the words "for such * * * vehicle" in that subdivision the Appellate Division majority stated that "North Carolina at the time of this accident required *residents and nonresidents* to be insured for an amount not less than $15,000" (80 AD2d

2. As to the dissenter's hypothetical query as to whether subdivision 5 of section 672 would reduce the coverage to a limit below that fixed by subdivision 2-a of section 167 of the Insurance Law when a New York automobile enters a State with lower limits, suffice it to say that subdivision 5 of section 672 does not so provide. Rather, since it specifies that the coverage shall be "*at least* in the minimum amount required [by the] other state", the New York limits in any event would remain applicable.

130, 131; italics supplied) and concluded that North Carolina's law "imposes a requirement *on the nonresident* of conforming to the minimum amount of insurance coverage mandated by the laws of North Carolina" (80 AD2d 130, 134; italics supplied). Not only was that an incorrect application of the New York law but also it misinterprets the North Carolina statutes. The majority in this court, recognizing in part the Appellate Division's error, admits that (p 168) "North Carolina, strictly speaking, does not require nonresidents to carry insurance in the limits prescribed by it *ab initio,*" but concludes that "the nature of [the] over-all plan is such that * * * New York * * * could hardly have failed to insist on the ultimate security of the North Carolina insurance limits". Thus, though correctly conceiving what the North Carolina statute does, the majority nevertheless sustains the Appellate Division's result, ignoring not only the phrase "for the vehicle" in our statute, but the word "required" (which relates not to what New York might have required but what North Carolina law required) in that statute as well.

The simple facts are that our statute does not say "in the minimum amount that would be required for such vehicle if it were registered in such other state," and that North Carolina has not one but two financial responsibility acts, one (the 1957 act) relating to registration of vehicles and requiring a liability policy with a minimum of $15,000 (NC Gen Stats, § 20-309), and the other (the 1953 act) relating to the license of the operator or owner of a motor vehicle involved in "a motor vehicle accident within this State which has resulted in bodily injury or death or damage to the property of any one person in excess of two hundred dollars", but which does not require the filing of security or other proof of financial responsibility until *after* such an accident (NC Gen Stats, § 20-279.5).*

As the majority's footnote 1 acknowledges, a passenger vehicle registered in New York is not required to be registered in North Carolina (NC Gen Stats, §§ 20-4.8, 20-51, subd [1]), unless its owner takes up permanent or

* Thus, the 1957 act describes the 1953 act as "relating to proof of financial responsibility required of each operator and each owner of a motor vehicle *involved in an accident*, and relating to nonpayment of a judgment" (NC Gen Stats, § 20-314 [italics supplied]).

temporary residence in that State extending beyond 30 days (NC Gen Stats, § 20-4.6; see § 20-313). The Padilla vehicle was, however, simply in transit through North Carolina on the way to Florida. Therefore, the $15,000 minimum provided for in the 1957 statute was not "required for such [Padilla's] vehicle by the laws of" North Carolina within the meaning of subdivision 5 of section 672 of the Insurance Law.

The 1953 statute, on the other hand, while it does not *require* insurance coverage for any vehicle, does provide for the suspension of a nonresident's privilege of operating a motor vehicle in North Carolina. Suspension can only occur, however, after the nonresident operator has had an accident and has failed to present to the commissioner evidence of a release from liability, a final adjudication of nonliability, or a written agreement for the payment of an agreed amount, or to deposit the amount of security the commissioner deems sufficient to satisfy any and all judgments for damages resulting from the accident (NC Gen Stats, § 20-279.5, subds [a], [b]; see, also, §§ 20-21, 20-22). The suspension provisions of the 1953 act do not apply, however, under the conditions stated in subdivision (c) of section 20-279.5 and section 20-279.6. One such condition is the existence of a liability policy or bond covering the vehicle or its owner or operator "to a limit, exclusive of interest and cost [*sic*], of no less than fifteen thousand dollars" (NC Gen Stats, § 20-279.5, subd [c]). Clearly, therefore, the 1953 act does not, either before or after an accident, require that a nonresident operator driving a vehicle registered in his State of residence, who has not resided in North Carolina for more than 30 days, be insured in any amount. All that it does is excuse such a nonresident driver from the suspension after an accident of his nonresident's privilege of operating a vehicle in North Carolina on a number of bases, one of which is that at the time of the accident he had insurance with a $15,000 minimum. To be noted, furthermore, is the fact that suspension is in any event not immediate or automatic; section 20-279.5 does not authorize suspension until the expiration of 20 days after receipt of a report of the accident or permit a notice of suspension to become effective until not less than 10 days after it is sent to the operator or owner.

That the interpretation of the two acts above set forth is that accorded them by the North Carolina Supreme Court is made clear beyond dispute by *Faizan v Grain Dealers Mut. Ins. Co.* (254 NC 47), cited by the majority. The opinion in that case describes the two acts as follows (254 NC 47, 52-54):

"(a). The 1953 Act.

"This Act applies to those persons whose driver's licenses have been suspended by reason of violations of motor vehicle statutes, failure to pay and discharge judgments for damages resulting from ownership or operation of motor vehicles, or failure to prove financial responsibility where damages have been occasioned by the ownership or operation of motor vehicles. It is provided that such persons, where they are otherwise entitled to restoration of driver's licenses, must prove financial responsibility before such licenses may be restored. The financial responsibility must then be maintained for two years. One method of proving and maintaining financial responsibility is to obtain automobile liability insurance as defined by, and in compliance with, G.S. 20-279.21.

* * *

"(b). The 1957 Act.

"This Act requires proof of financial responsibility by all motor vehicle owners who apply to the Department for North Carolina registration certificates and plates. Financial responsibility may be shown by procurement of automobile liability insurance. Before a motor vehicle may be registered and registration plates obtained, a certificate of insurance coverage (FS-1) must be delivered by an insurer to the Commissioner.

* * *

"The 1953 Act applies to a limited class of motorists — those whose driver's licenses have been suspended. These motorists must show financial responsibility as a condition precedent to restoration of their driver's licenses. The 1957 Act applies to an unlimited class — all motor vehicle owners. Before obtaining periodic registration certificates and plates for vehicles, they must prove financial responsibility. One Act relates to restoration of driver's license, the other to motor vehicle registration."

Not only is the majority's conclusion inconsistent with the statutes in both States, but also its policy rationale is difficult to understand. North Carolina can, if it sees fit to do so, impose upon the owners or drivers of vehicles registered in other States the obligation of carrying insurance in a stated and reasonable amount as a condition of the use of its highways in order to protect its residents (and itself if they be impecunious) against the expenses and other results of an accident within its borders (see *Hess v Pawloski*, 274 US 352; *Leighton v Roper*, 300 NY 434). It has not done so. New York's interests in providing coverage under a policy issued in New York for an accident occurring in another State are (1) to protect the New York owner or New York operator from the criminal responsibility that may result from driving the vehicle in the other State without coverage in the amount required by the laws of that State and (2) as a matter of reciprocity, to protect the State where the accident occurred and the persons injured in that State against expenses and damages resulting from the injury to the same extent that the laws of that State require. A possible secondary purpose may be through the operation of reciprocity to obtain for New York residents injured by an out-of-State vehicle operated in New York the higher limit of coverage required by the other State, although that hardly seems probable because it would be most unusual for a policy issued in a higher limit State to provide that if the vehicle is operated in a lower limit State the coverage of the policy as to an accident there occurring would be reduced to the lower limit. In any event, none of those purposes has any bearing on the facts of this case, at least until an order of suspension of Padilla's nonresident operating privilege has been issued by North Carolina, for until that time Padilla is not required by North Carolina law to have any insurance and cannot be subjected to any criminal responsibility. Neither New York nor North Carolina requires $15,000 coverage for a New York registered vehicle when operated in North Carolina for less than 30 days. Nor is it reasonable to interpret New York's law, which requires only $10,000 coverage for the protection of a New York resident injured in a New York registered vehicle in an accident occurring in New York, as intended

to require $15,000 coverage for a New York resident's injuries, simply because the injury to the New York resident in a New York registered vehicle occurred in a State which requires of its own registered vehicle owners but not of out-of-State vehicle owners, coverage of $15,000.

I would reverse and direct the entry of judgment declaring that the limit of Country-Wide's obligation under the Padilla policy to Nieves Rodriguez is $10,000.

Chief Judge COOKE and Judges GABRIELLI and WACHTLER concur with Judge FUCHSBERG; Judge MEYER dissents and votes to reverse in a separate opinion in which Judge JASEN concurs; Judge JONES taking no part.

Order affirmed.

COUNTRY-WIDE INSURANCE COMPANY, Appellant, v NIEVES RODRIGUEZ, an Infant, by ROSA RODRIGUEZ, Her Mother and Natural Guardian, et al., Respondents.

First Department, April 9, 1981

SUMMARY

APPEAL from an order and judgment (one paper) of the Supreme Court at Special Term (MARTIN B. KLEIN, J.), entered May 5, 1980 in New York County, which (1) granted defendants Rodriguez' motion for summary judgment dismissing the complaint, and (2) declared that plaintiff afforded defendant Padilla insurance coverage under a certain insurance policy.

Country Wide Ins. Co. v Rodriguez, 103 Misc 2d 906, affirmed.

HEADNOTE

Insurance — Automobile Liability Insurance

Where the host driver and injured guest passenger are residents of New York State and an accident occurs in a sister State or Canada, the insurer of the vehicle is required to afford the driver insurance coverage in the minimum amount set by the State or the province where the accident occurred, regardless of whether this amount is higher than the minimum amount of insurance coverage required in New York State, since subdivision 5 of section 672 of the Insurance Law states that every insurance policy shall provide, when a motor vehicle covered by such policy is used or operated in any other State or in any Canadian province, insurance coverage in the minimum amount required for such vehicle by the laws of such other State or Canadian province.

APPEARANCES OF COUNSEL

Bernard Samuels of counsel (*Eric M. Alderman* with him on the brief; *Pokorny, Schrenzel & Pokorny*, attorneys), for appellant.

Seymour Berkowitz of counsel (*Marilyn Singer* with him on the brief; *Weiss, Molod, Berkowitz & Godosky, P. C.*, attorneys), for Nieves Rodriguez, respondent.

OPINION OF THE COURT

LUPIANO, J.

On August 15, 1977, defendant Nieves Rodriguez, an infant under the age of 14 years, was a passenger together

with his mother, defendant Rosa Rodriguez, in a motor vehicle owned and operated by defendant Louis Padilla. The vehicle was insured by plaintiff Country-Wide Insurance Company under a policy issued to Padilla which contained the *minimum* liability limits prescribed by subdivision 2-a of section 167 of the Insurance Law, to wit, $10,000/$20,000. The three defendants are residents of New York State. At this time (August 15, 1977) the vehicle was in transit in North Carolina on a round trip to Florida from New York when it collided with a vehicle owned and operated by a resident of North Carolina, one Paul Hill. Subsequent suit brought on behalf of the injured infant in this State resulted in a judgment for $100,000 against Padilla and Hill, apportioned 60% as against Padilla and 40% as against Hill (103 Misc 2d 906).

North Carolina at the time of this accident required residents and nonresidents to be insured for an amount not less than $15,000 in connection with any single injured claimant (see North Carolina Motor Vehicle Law, art 9A [entitled "Motor Vehicle Safety and Financial Responsibility Act of 1953"], § 20-279.1, subd [11]; §§ 20-279.5, 20-279.8, 20-279.20, 20-279.21). Thus, in North Carolina the minimum liability limits are $15,000/$30,000.

The key applicable New York statute is subdivision 5 of section 672 of the Insurance Law which provides in unambiguous terms, as follows: "Every owner's policy of liability insurance issued in satisfaction of articles six or eight of the vehicle and traffic law shall also provide, when a motor vehicle covered by such policy *is used or operated in any other state* or in any Canadian province, *insurance coverage* for such motor vehicle at least *in the minimum* amount *required* for such vehicle *by the laws of such other state* or Canadian province" (emphasis supplied). Section 311 of the Vehicle and Traffic Law entitled "Definitions" defines in subdivision 3 the term "proof of financial security" and defines in subdivision 4 the term "owner's policy of liability insurance". Section 311 is part of article 6 of the Vehicle and Traffic Law entitled "Motor Vehicle Financial Security Act". Accordingly, section 311 of the Vehicle and Traffic Law is interrelated with and subject to subdivision 5 of section 672 of the Insurance Law by

virtue of the clear language of the latter statute. By its mandatory language, subdivision 5 of section 672 of the Insurance Law, must be read into the policy of insurance at issue herein. It is well recognized that an insurance policy must be read to give effect to its plain and ordinary meaning and that, assuming ambiguity, such ambiguity must be read in a light most favorable to the insured.

The infant defendant demanded, having recovered the afore-mentioned judgment, that the minimum liability for damages of $15,000 set by North Carolina be the measure of the plaintiff insurer's liability under the policy it issued to Padilla rather than the policy limitation of $10,000, which was otherwise in accordance with New York requirements. Plaintiff insurer then instituted the instant action for declaratory judgment, seeking an adjudication that the limit of its liability is $10,000 rather than $15,000, and that in the event of an adverse determination, it have indemnity from the insured for the $5,000 difference because the terms of the policy appear to limit plaintiff's liability to $10,000.

No authority is presented to overcome the evident legislative intent that despite the host driver and the injured guest passenger being residents of New York State, when an accident occurs in a sister State or Canada if the sister State or Canada has a higher minimum (as in this case) then the higher minimum prevails. It appears to be the intention of the Legislature in subdivision 5 of section 672 of the Insurance Law to impose liability in all cases upon the carrier and not the insured for the higher out-of-State minimum. Plaintiff is deemed to have notice of said statute when it issued its policy to Padilla in 1977, three years after subdivision 5 of section 672 of the Insurance Law became effective.

In *Mindell v Travelers Ind. Co.* (46 AD2d 263, 266, affd 38 NY2d 815), a somewhat analogous situation to the instant matter, it was held that no statute was effective to vary the $10,000 liability provided by the policy because "subdivision 5 of section 672 of the Insurance Law of this State did not become effective until February 1, 1974 and

therefore did not vary the policy in question" as the accident (in *Mindell)* occurred on August 14, 1967. It is reasonably inferred, therefore, that if said statute was effective at the time of the accident in *Mindell*, a different result would ensue.

Insurance Department regulations in this State have been conformed to the statute. They now provide in 11 NYCRR Part 60 entitled "Minimum Provisions for Automobile Liability Insurance Policies", as follows: "Section 60.1 Mandatory provisions. An 'owner's policy of liability insurance' *shall contain* in substance the *following minimum provisions* or provisions which are *equally or more favorable to the insured* and judgment creditors * * * A provision that when a motor vehicle is used or operated in any other State or Canadian province a policy currently in effect or hereafter issued shall provide at least the minimum amount and kind of coverage which is required in such cases under the laws of such other jurisdiction. *Any policy not containing such provision shall nevertheless be deemed to provide such coverage.* This provision is not intended to create a duplication of coverage or benefits to the extent that a New York insured carries additional coverages under any automobile or motor vehicle insurance policy or is covered under an automobile or motor vehicle policy of a resident of the jurisdiction wherein an injury occurs" (11 NYCRR 60.1[e]; emphasis supplied).

Accordingly, under the circumstances herein the North Carolina minimum is applied, not by virtue of its own weight, but because New York State in enacting subdivision 5 of section 672 of the Insurance Law has chosen to adopt the North Carolina minimum. This conclusion is supported by the analysis of subdivision 5 of section 672 in *Wierbinski v State Farm Mut. Auto. Ins. Co.* (477 F Supp 659). In that case the Federal District Court rejected the contention that the New York statute (Insurance Law, § 672, subd 5) was intended to afford the increased protection of the higher out-of-State minimum only to out-of-State domiciliaries who may be injured by the New York policyholder. The District Court also avoided the ping pong effect of mirror statutes, i.e., where the sister State in which the

accident occurs has a statute similar to section 672 of New York's Insurance Law.*

The defect, as I see it, of Justice SILVERMAN'S construction of the North Carolina statute is that the victim(s) of the *first* accident in North Carolina involving the New York motor vehicle would not obtain the benefit of subdivision 5 of section 672 of New York's Insurance Law, but the victim(s) of any subsequent accident in North Carolina involving the New York motor vehicle would obtain such benefit. This "one free bite of the apple" approach ignores, it appears to me, the strong public policy underlying the relevant North Carolina statutes and our own Insurance Law (§ 672, subd 5). It is difficult to conceive a viable rationale for the States of North Carolina and New York carving out a fortuitous exception from those members of the public entitled to the protection of the motor vehicle financial responsibility laws, to wit, those members, if any, injured in the first accident involving the subject vehicle. My view of the North Carolina motor vehicle responsibility law is that it imposes a requirement on the nonresident of conforming to the minimum amount of insurance coverage mandated by the laws of North Carolina and that in the event of failure to conform (which failure is disclosed by an accident involving the nonresi-

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* "Under the interpretation given to the mirror provision of § 672.1 in the Pennsylvania No-Fault Act, § 110(b), § 672.1 may be read to guarantee a New York domiciliary benefits *at least* up to the statutory maximums of the New York Act * * * The Pennsylvania law sets out the requirements for the minimum security to be carried by each vehicle operating within the Commonwealth in § 104 of the No-Fault Act which provides, in pertinent part, as follows: § 104. Required motor vehicle insurance (a) * * * *Security shall be provided for the payment of basic loss benefits.* . . . Basic loss benefits are 'benefits provided in accordance with this act for the net loss sustained by a victim, subject to any applicable limitations, exclusions, deductibles, waiting periods, disqualifications, or other terms and conditions provided or authorized in accordance with this act.' 40 P.S. § 1009.103. Defendant makes much of the phrase 'subject to any limitations, exclusions and conditions as otherwise provided in this act,' contending that § 110(c), the choice of law section constitutes such a limitation. By directing inquiry initially to the New York Act to determine coverage, defendant argues that all benefits to plaintiff are 'limited' to the ceilings of the New York law. Such an interpretation is inconsistent with our construction of § 672.5 of the New York Act and would result in an eternal ping pong volley between the laws of the two states" (*Wierbinski v State Farm Mut. Auto. Ins. Co.*, 477 F Supp 659, 661-662).

dent's vehicle) the privilege of the nonresident to operate a motor vehicle in the State of North Carolina will be revoked unless certain procedural steps are taken which insure such conformity. From this it may be reasonably inferred that North Carolina *ab initio* requires a nonresident to comply with the minimum amount of insurance coverage required for operation of a motor vehicle in that State.

Finally, pursuant to the Insurance Department regulations set forth above, the policy of insurance herein (which did not contain a provision that when the motor vehicle is operated in any other State or Canadian province insurance in at least the minimum amount required under the laws of such other jurisdiction be provided) is deemed to provide such coverage. Any ambiguity must be resolved in the manner most favorable to the insured (see *Wierbinski v State Farm Mut. Auto. Ins. Co.*, *supra*, at p 662).

Accordingly, the order and judgment (one paper) of the Supreme Court, New York County (M. KLEIN, J.), entered May 5, 1980, which granted defendants' motion for summary judgment to dismiss the complaint and declared that plaintiff afford defendant Padilla insurance coverage in the sum of $15,000 under the policy issued by plaintiff to Padilla in connection with the judgment recovered by Nieves Rodriguez, an infant, and which denied plaintiff's cross motion for summary judgment, should be affirmed with costs and disbursements.

SILVERMAN, J. (dissenting). This is an action for a declaratory judgment by plaintiff, the liability insurer, to declare the limits of liability of the policy. Special Term has declared as to the claim here involved that plaintiff insurer afforded liability coverage in the sum of $15,000 (103 Misc 2d 906). Plaintiff appeals.

Defendant infant and her mother were passengers in a car insured by plaintiff that was involved in an accident in North Carolina in which the infant defendant was injured. Another car owned by a North Carolina resident was also involved in the accident. The infant defendant has recovered a judgment for $40,000 against the North Carolina car owner and $60,000 against the owner of the car in which she was a passenger and which was insured by plaintiff. There was apparently no recovery by the mother.

The insured under the policy, the owner operator of the car, as well as the passengers were all residents of New York and the car was registered in New York. They were on a trip to Florida.

The policy contained the usual New York minimum statutory limits of $10,000/$20,000. Subdivision 5 of section 672 of the New York Insurance Law provides: "5. Every owner's policy of liability insurance issued in satisfaction of articles six or eight of the vehicle and traffic law shall also provide, when a motor vehicle covered by such policy is used or operated in any other state or in any Canadian province, insurance coverage for such motor vehicle at least in the minimum amount required for such vehicle by the laws of such other state or Canadian province."

Thus the limit of liability of the policy as to this accident is $10,000 unless a larger amount is "required for such vehicle by the laws of" North Carolina. "Such vehicle" for present purposes may be defined as a car registered in New York, owned and operated by a resident of New York, used on a temporary trip through North Carolina, and involved in an accident in North Carolina.

Under North Carolina law, the statutory minimums in effect at the time of the accident at least for North Carolina cars were generally $15,000/$30,000 (North Carolina Gen Stats, §§ 20-309, 20-279.1, subd [11]).

Financial responsibility, which for present purposes means a liability insurance policy, is a prerequisite to *registration* of a motor vehicle in North Carolina (North Carolina Gen Stats, § 20-309). Registration of all motor vehicles "intended to be operated upon any highway of this State" (North Carolina) is required unless exempted by statute (North Carolina Gen Stats, § 20-50, subd [a]). Vehicles licensed or registered in another jurisdiction are exempt from the registration requirement where there is a reciprocity agreement to that effect with such other jurisdiction (North Carolina Gen Stats, § 20-4.4, subd [a]) or, in the absence of an agreement, where such other jurisdiction grants such exemption to vehicles properly registered in North Carolina (North Carolina Gen Stats, § 20-4.8). New York law exempts from its registration

requirement vehicles owned by nonresidents "provided that the owner * * * shall have complied with the provisions of the law of the * * * state * * * of his residence relative to registration" (Vehicle and Traffic Law, § 250, subd 1). Since the vehicle insured by plaintiff was registered in New York, it was exempt from the general registration and financial responsibility requirements of North Carolina. North Carolina apparently does require proof of financial responsibility in the minimum amount of $15,000 from a vehicle owned and operated by a nonresident *after* such vehicle has been involved in an accident within the State resulting in bodily injury, death, or damage in excess of $200. (North Carolina Gen Stats, § 20-279.5.) But so far as appears, this vehicle had not previously been involved in a North Carolina accident. Our attention has not been called to, and our own research has failed to find, any provision of North Carolina law which at the time of the accident required coverage in the amount of $15,000 for the vehicle insured by plaintiff, i.e., a New York registered car on a temporary trip through North Carolina and not previously involved in an accident in that State.

Thus it cannot be said that $15,000 was "required for such vehicle by the laws of" North Carolina. (Insurance Law, § 672, subd 5.) Plaintiff is entitled to a declaration that the limit of its liability with respect to this accident is $10,000.

The order of the Supreme Court, New York County (M. B. KLEIN, J.), entered May 5, 1980, should be modified, on the law, without costs, to the extent of striking the first and third decretal paragraphs and substituting in the second decretal paragraph for the figure $15,000 the figure $10,000, and otherwise affirmed.

SULLIVAN, J. P., and BLOOM, J., concur with LUPIANO, J.; MARKEWICH, J. and SILVERMAN, J., dissent in an opinion by SILVERMAN, J.

Order and judgment (one paper) of the Supreme Court, New York County, entered on May 5, 1980, affirmed. Respondents Rodriguez shall recover of appellant $75 costs and disbursements of this appeal.

COUNTRY WIDE INSURANCE COMPANY, Plaintiff, v NIEVES RODRIGUEZ, an Infant by Her Mother and Natural Guardian, ROSE RODRIGUEZ, et al., Defendants.

Supreme Court, New York County, March 31, 1980

HEADNOTES

Insurance — Automobile Liability Insurance — Minimum Coverage

1. Subdivision 5 of section 672 of the Insurance Law, which requires automobile liability policies issued pursuant to article 6 or 8 of the Vehicle and Traffic Law to contain a clause providing for coverage at least commensurate with the minimum insurance coverage required by a sister State or Canadian province when the insured vehicle is operated in that State or province, is not applicable only when the insured resides in or has some nexus with the relevant State or province since such an interpretation is not supported by the language of the statute or its history, would favor out-of-State residents over New York residents, and would encourage New York residents injured in a State requiring higher minimum coverage to litigate their claims in the foreign State or province; furthermore, the foreign State, by requiring a higher minimum coverage than that required in New York, is not interfering with a New York contract which fixed coverage in a lower amount than that required in the foreign State since the foreign State's minimum coverage is applied by virtue of New York's decision, in enacting subdivision 5 of section 672 of the Insurance Law, to adopt the foreign State's law for purposes of the lawsuit only.

Insurance — Automobile Liability Insurance — Minimum Coverage

2. An insurance company may not seek indemnification from its insured for amounts paid in excess of the insured's coverage pursuant to subdivision 5 of section 672 of the Insurance Law, which requires insurance companies issuing automobile liability policies pursuant to article 6 or 8 of the Vehicle and Traffic Law to provide at least the minimum coverage required by a sister State or Canadian province when the insured vehicle is operated in such sister State or province, since an insurer may not seek indemnity from its own insured.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES*

30 NY JUR, Insurance § 1259.6
CLS, Insurance Law § 672 subd 5
AM JUR 2d NEW TOPIC SERVICE, No-Fault Insurance § 4

ANNOTATION REFERENCES

Validity and construction of "no-fault" automobile insurance plans. 42 ALR3d 229.

No-fault: right of insurer to reimbursement out of recovery against tort-feasor. 69 ALR3d 830.

* By the Publisher's Editorial Staff.

APPEARANCES OF COUNSEL

Pokorny, Schrenzel & Pokorny for plaintiff. *Weiss, Molod, Berkowitz & Godosky, P. C.*, for defendants.

OPINION OF THE COURT

MARTIN B. KLEIN, J.

This is an action seeking a declaration as to the amount of coverage provided by an automobile liability policy. Country Wide Insurance Co. (Country Wide) issued a policy in New York to the defendant, Padilla, a resident of New York, with coverage of $10,000 for bodily injury to one person. While passing through North Carolina on the way to Florida, defendant, Nieves Rodriguez, a passenger in Padilla's automobile, was injured in a collision involving Padilla's automobile and one owned and operated by a North Carolina resident. Nieves Rodriguez then brought suit in New York against both owner operators and was awarded judgment in the amount of $100,000.

Inasmuch as North Carolina law requires motor vehicles owned by its residents to carry minimum coverage of $15,000 for bodily injury to one person, Miss Rodriguez maintains that she is entitled to coverage of $15,000 under the Country Wide policy and moves for summary judgment thereunder. Country Wide cross-moves for summary judgment, claiming that its liability is limited to $10,000, the amount stated in its policy. In its complaint, it also alleges that if it is held liable to Miss Rodriguez for $15,000, it is entitled to be indemnified by Padilla for the $5,000 extended coverage.

This case requires an interpretation and application of subdivision 5 of section 672 of the New York State Insurance Law, which states: "Every owner's policy of liability insurance issued in satisfaction of articles six or eight of the vehicle and traffic law shall also provide, when a motor vehicle covered by such policy is used or operated in any other state or in any Canadian province, insurance coverage for such motor vehicle at least in the minimum amount required for such vehicle by the laws of such other state or Canadian province."

[1] Country Wide maintains that subdivision 5 of section 672 applies only when the injured person resides in another State or Canadian province or, at least, has more than a mere fortuitous nexus with it. Such an interpretation has no support in the statute, in its legislative history, or in common

sense. Indeed, such an interpretation would give out-of-State residents broader benefits than it would New York residents. Moreover, were this court to accept Country Wide's interpretation, as a practical matter in all cases involving New York residents injured in a State requiring higher minimum coverage, New York residents would be obliged to litigate their claims in the foreign State or Canadian forum.

Country Wide further maintains that by requiring $15,000 minimum coverage, North Carolina is interfering with a New York contract which fixed coverage at $10,000. Such an argument finds even less support in the language of the statute. When suit is brought in New York, the North Carolina minimum is applied, not by virtue of its own weight, but because New York State, in enacting subdivision 5 of section 672 of the Insurance Law, has chosen to adopt North Carolina law for purposes of the lawsuit only.

Although there are no cases on point, this conclusion was foreshadowed by *Mindell v Travelers Ind. Co.* (46 AD2d 263). In that case, the tort-feasor was a resident whose policy, issued in New York, provided for the minimum $10,000 personal injury coverage. The accident, which injured a New York resident, took place in Ontario where the minimum required coverage was $35,000. On an agreed statement of facts, the court held that Travelers was liable for only $10,000 coverage. The court made it clear, however, that its refusal to apply subdivision 5 of section 672 was based solely upon the fact that said statute had not been enacted at the time of the accident. In the case at bar, subdivision 5 of section 672 was in effect at the time of the accident and, absent a competing or conflicting governmental interest in New York sufficient to displace the *lex loci delictus,* it should be applied. *(Neumeier v Kuehner,* 31 NY2d 121, 131 [BREITEL, J., concurring].)

The court therefore grants the motion to the extent of declaring that Country Wide's coverage for bodily injury to one person in this accident was $15,000 and denies the cross motion.

[2] A motion for summary judgment searches the record. (CPLR 3212, subd [b]; *Wiseman v Kraus,* 24 AD2d 869.) The court therefore also dismisses Country Wide's action for indemnity from Padilla, its insured. The coverage paid for by Padilla was not merely $10,000/$20,000 coverage prescribed by subdivision 2-a of section 167 of the Insurance Law, but also the extended coverage required by subdivision 5 of section

672 of Insurance Law. An insurer may not seek indemnity from its own insured. *(Prindle v Rockland Tr. Corp.*, 263 App Div 873; *Century Ind. Co. v Hartford Acc. & Ind. Co.*, 130 NYS2d 844.)

§ 6. [Grand jury; waiver of indictment; right to counsel; informing accused; double jeopardy; self-incrimination; waiver of immunity by public officers; due process of law]

No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land, air and naval forces in time of war, or which this state may keep with the consent of congress in time of peace, and in cases of petit larceny, under the regulation of the legislature), unless on indictment of a grand jury, except that a person held for the action of a grand jury upon a charge for such an offense, other than one punishable by death or life imprisonment, with the consent of the district attorney, may waive indictment by a grand jury and consent to be prosecuted on an information filed by the district attorney; such waiver shall be evidenced by written instrument signed by the defendant in open court in the presence of his counsel. In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself, providing, that any public officer who, upon being called before a grand jury to testify concerning the conduct of his present office or of any public office held by him within five years prior to such grand jury call to testify, or the performance of his official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his present office by the appropriate authority or shall forfeit his present office at the suit of the attorney-general.

The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law.

No person shall be deprived of life, liberty or property without due process of law.

Amended Nov. 8, 1938; Nov. 8, 1949; Nov. 3, 1959; Nov. 6, 1973, eff. Jan. 1, 1974.

§ 7. [Just compensation for taking private property; private roads; drainage of agricultural lands]

(a) Private property shall not be taken for public use without just compensation.

(b) Repealed.

(c) Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceedings, shall be paid by the person to be benefited.

(d) The use of property for the drainage of swamp or agricultural lands is declared to be a public use, and general laws may be passed permitting the owners or occupants of swamp or agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions, on making just compensation, and such compensation together with the cost of such drainage may be assessed, wholly or partly, against any property benefited thereby; but no special laws shall be enacted for such purposes.

(e) Repealed.

Amended Nov. 8, 1938; Nov. 5, 1963; Nov. 3, 1964, eff. Jan. 1, 1965.

§ 8. [Freedom of speech and press; criminal prosecutions for libel]

Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

(6) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding but which is not appealable under paragraph (1) of this subdivision where the appellate division or the court of appeals shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals. Such an appeal may be allowed upon application (a) to the appellate division, and in case of refusal, to the court of appeals, or (b) directly to the court of appeals. Such an appeal shall be allowed when required in the interest of substantial justice.

(7) No appeal shall be taken to the court of appeals from a judgment or order entered upon the decision of an appellate division of the supreme court in any civil case or proceeding where the appeal to the appellate division was from a judgment or order entered in an appeal from another court, including an appellate or special term of the supreme court, unless the construction of the constitution of the state or of the United States is directly involved therein, or unless the appellate division of the supreme court shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals.

(8) The legislature may abolish an appeal to the court of appeals as of right in any or all of the cases or classes of cases specified in paragraph (1) of this subdivision wherein no question involving the construction of the constitution of the state or of the United States is directly involved, provided, however, that appeals in any such case or class of cases shall thereupon be governed by paragraph (6) of this subdivision.

Adopted Nov. 7, 1961, eff. Sept. 1, 1962.

§ 4. [Judicial departments; appellate divisions of supreme court and justices thereof; temporary designation of additional justices; transfer of appeals; jurisdiction]

a. The state shall be divided into four judicial departments. The first department shall consist of the counties within the first judicial district of the state. The second department shall consist of the counties within the second, ninth, tenth and eleventh judicial districts of the state. The third department shall consist of the counties within the third, fourth and sixth judicial districts of the state. The fourth department shall consist of the counties within the fifth, seventh and eighth judicial dis-

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" at the end of the first sentence of subsection (b).

§ 20-4.5. Base-state registration reciprocity. — An agreement or arrangement entered into, or a declaration issued under the authority of this Article may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in some other state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction. (1961, c. 642, s. 1.)

§ 20-4.6. Declarations of extent of reciprocity, when; deferral period for registration of vehicles owned by new residents. — In the absence of an agreement or arrangement with another jurisdiction, the Commissioner may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and which shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

It is hereby provided that the owner of a private passenger vehicle who takes up residence in North Carolina on a permanent or temporary basis shall be exempt from the provisions of registration for a period of 30 days from the date that either permanent or temporary residence is established in North Carolina provided that his vehicle is properly licensed in the jurisdiction of which he is a resident or a former resident. (1961, c. 642, s. 1; 1967, c. 1166.)

§ 20-4.7. Extension of reciprocal privileges to lessees authorized. — An agreement or arrangement entered into, or a declaration issued under the authority of this Article, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration. (1961, c. 642, s. 1.)

§ 20-4.8. Automatic reciprocity, when. — On and after July 1, 1961, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this Article, any vehicle properly registered or licensed in such other jurisdiction and for which evidence of compliance supplied shall receive, when operated in this State, the same exemptions, benefits and privileges granted by such other jurisdiction to vehicles properly registered in this State. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate operations. (1961, c. 642, s. 1.)

§ 20-4.9. Suspension of reciprocity benefits. — Agreements, arrangements or declarations made under the authority of this Article may include provisions authorizing the Division to suspend or cancel the exemptions, benefits or privileges granted thereunder to a vehicle which is in violation of any of the conditions or terms of such agreements, arrangements or declarations or is in violation of the laws of this State relating to motor vehicles or rules and regulations lawfully promulgated thereunder. (1961, c. 642, s. 1; 1975, c. 716, s. 5.)

§ 20-21. No operation under foreign license during suspension or revocation in this State. — Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this Article shall not operate a motor vehicle in this State under a license, permit or registration issued by another jurisdiction or otherwise during such suspension, or after such revocation until a new license is obtained when and as permitted under this Article. (1935, c. 52, s. 15.)

§ 20-22. Suspending privileges of nonresidents and reporting convictions. — (a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Division in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

(b) The Division is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. (1935, c. 52, s. 16; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

Opinions of Attorney General. — Honorable John S. Gardner, District Court Judge, Sixteenth Judicial District, 40 N.C.A.G. 420 (1969).

Cited in Morrisey v. Crabtree, 143 F. Supp. 105 (M.D.N.C. 1956).

§ 20-23. Suspending resident's license upon conviction in another state. — The Division is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction as defined in G.S. 20-24(c) of such person in another state of the offenses hereinafter enumerated which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. The provisions of this section shall apply only for the offenses as set forth in G.S. 20-26(a). (1935, c. 52, s. 17; 1971, c. 486, s. 2; 1975, c. 716, s. 5.)

Cross Reference. — See note to § 20-16.

Editor's Note. — The 1975 amendment substituted "Division" for "Department."

For note on choice of law rules in North Carolina, see 48 N.C.L. Rev. 243 (1970).

Opinions of Attorney General. — Honorable John S. Gardner, District Court Judge, Sixteenth Judicial District, 40 N.C.A.G. 420 (1969).

Section Is Not Mandatory. — The Department (now Division) of Motor Vehicles, under provisions of this section, is merely authorized, not directed, to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

Discretion of Division. — Under the provisions of this section, it is discretionary with the Department (now Division) to suspend or revoke an operator's license upon receiving notice of his conviction in another state of an offense which, if committed in this State, would be grounds for suspension or revocation. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838 (1970).

Section Construed with § 20-16. — See note to § 20-16.

And § 20-25. — This section and § 20-25 must be construed in pari materia. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Licensee May Show Invalidity of Out-of-State Conviction. — Where an order of the Department (now Division) of Motor Vehicles permanently revoking the license of a driver upon a third conviction for operating a motor vehicle while under the influence of intoxicating liquor is based in part upon notice of the licensee's conviction of that offense in another state, the licensee has the right to show, if he can, that the proceedings in such other state were irregular, invalid and insufficient to

§ 20-51. Exempt from registration. — The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading. This section shall not be construed as granting any exemption to farm tractors and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, fertilizers or chemicals purchased or owned by such farmer or tenant for personal use in implementing husbandry or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing. (1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146; 1971, c. 107; 1973, cc. 478, 757, 964.)

Cross References. — As to manufacturers and dealers, see § 20-79. As to nonresidents, see § 20-83.

Farm tractors are not to be considered motor vehicles within the statute relating to the registration and certificates of titles of motor vehicles. Brown v. Fidelity & Cas. Co., 241 N.C. 666, 86 S.E.2d 433 (1955).

Cited in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953).

§ 20-52. Application for registration and certificate of title. — (a) Every owner of a vehicle subject to registration hereunder shall make application to

Former § 20-232 has been reenacted and renumbered as § 20-17.1.

ARTICLE 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.1. Definitions. — The following words and phrases, when used in this Article, shall, for the purposes of this Article, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Repealed by Session Laws 1973, c. 1330, s. 39.

(2) "Conviction": A conviction upon a plea of guilty, or of nolo contendere, or the determination of guilt by a jury or by a court though no sentence has been imposed or, if imposed, has been suspended, and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated.

(3) "Judgment": Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(4) to (6) Repealed by Session Laws 1973, c. 1330, s. 39.

(7) "Nonresident's operating privilege": The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by him of a motor vehicle in this State.

(8) to (10) Repealed by Session Laws 1973, c. 1330, s. 39.

(11) "Proof of financial responsibility": Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident. Nothing contained herein shall prevent an insurer and an insured from entering into a contract, not affecting third parties, providing for a deductible as to property damage at a rate approved by the Commissioner of Insurance.

(12) Repealed by Session Laws 1973, c. 1330, s. 39. (1953, c. 1300, s. 1; 1955, c. 1152, s. 3; c. 1355; 1967, c. 277, s. 1; 1971, c. 1205, s. 1; 1973, c. 745, s. 1; c. 1330, s. 39.)

Cross References. — For definitions applicable throughout this Chapter, see § 20-4.01. As to Vehicle Financial Responsibility Act of 1957, see §§ 20-309 to 20-319. As to liability insurance covering negligent operation of municipal vehicles, see § 160A-485.

Editor's Note. — For comment on this Article, see 31 N.C.L. Rev. 420 (1953). For comment on insurer's liability for intentionally inflicted injuries, see 43 N.C.L. Rev. 436 (1965). For case law survey as to automobile liability insurance, see 44 N.C.L. Rev. 1023 (1966). For case law survey as to insurance, see 45 N.C.L. Rev. 955 (1967). Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967), cited in the

Supreme Court. Johnson v. Scheidt, 246 N.C. 452, 98 S.E.2d 451 (1957).

Commissioner and Court Held without Authority to Grant Relief. — Where petitioner did not allege that he was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, nor did he allege that the amount of the security required was excessive or that such security was not required by the terms of the statute and there were no allegations which if proved would entitle the petitioner to any relief, and the only relief requested by the petitioner was that the court postpone the posting of the security required by the Commissioner under § 20-279.5, neither the Commissioner nor the court had the authority to grant this relief and a motion to dismiss was properly granted. Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

§ 20-279.3. Commissioner to furnish operating record. — The Commissioner shall upon request furnish any person a certified abstract of the operating record of any person required to comply with the provisions of this Article, which abstract shall also fully designate the motor vehicle, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the Commissioner shall so certify. (1953, c. 1300, s. 3.)

§ 20-279.4. Information required in accident report. — In case of an accident in which any person is killed or injured or in which damage to the property of any one person in excess of two hundred dollars ($200.00) is sustained, the report required by G.S. 20-166 or 20-166.1 shall contain information to enable the Commissioner to determine whether the requirements for the deposit of security under G.S. 20-279.5 are inapplicable by reason of the existence of insurance or other exceptions specified in this Article. The Commissioner may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. The operator or the owner shall furnish such additional relevant information as the Commissioner shall require. (1953, c. 1300, s. 4; 1971, c. 763, s. 2.)

Cross Reference. — See note to § 20-279.5.

Information Required from Operator. — The operator of a motor vehicle is required by this section to inform the Department (now Division), when he notifies it of the accident, whether he carried liability insurance or was exempt from the statutory provision. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Right of Injured Party Not Impaired by Insured's Failure to Notify Insurer or Report Accident. — The right of an injured party, after recovery of unsatisfied judgment against insured, to recover against insurer in an assigned risk liability policy may not be defeated by the failure of insured to notify insurer of the accident or failure of insured to file an accident report with the Department (now Division) of Motor Vehicles. Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962).

Stated in Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions. — (a) If at the expiration of 20 days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death or damage to the property of any one person in excess of two hundred dollars ($200.00), the Commissioner does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, or is for any other reason not required to file security under this Article with respect to all claims for injuries or damages resulting from the accident, the Commissioner shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or

judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Commissioner shall, within 60 days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and each owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, unless such operator or owner, or both, shall deposit security in the sum so determined by the Commissioner; provided, notice of such suspension shall be sent by the Commissioner to such operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security; provided further, the provisions of this Article requiring the deposit of security and the suspension of license for failure to deposit security shall not apply to an operator or owner who would otherwise be required to deposit security in an amount not in excess of one hundred dollars ($100.00). Where erroneous information is given the Commissioner with respect to the matters set forth in subdivisions (1), (2) or (3) of subsection (c) of this section or with respect to the ownership or operation of the vehicle, the extent of damage and injuries, or any other matters which would have affected the Commissioner's action had the information been previously submitted, he shall take appropriate action as hereinbefore provided, within 60 days after receipt by him of correct information with respect to said matters. The Commissioner, upon request and in his discretion, may postpone the effective date of the suspension provided in this section by 15 days if, in his opinion, such extension would aid in accomplishing settlements of claims by persons involved in accidents.

(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless

said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355; 1967, c. 277, s. 2; 1971, c. 763, s. 3; 1973, c. 745, s. 2.).

Effect of Section. — This section makes it the duty of the Commissioner to suspend the driver's license if the owner-operator fails to discharge his liability for the damage resulting from the collision. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Act of Commissioner in suspending an operator's license is quasi-judicial. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

And it cannot be collaterally attacked. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

The driver of an automobile may not sue his insurer for damages resulting from the revocation of his driver's license resulting from the false representation of his insurer that the driver did not have insurance in force at the time he was involved in an accident, since such action amounts to a collateral attack upon the order of the Commissioner suspending the license and is based on subornation of perjury. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Plaintiff is entitled to hearing on factual question of whether he was insured. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

The second sentence in subsection (b) of this section gives the owner-operator of the motor vehicle full opportunity to present his evidence to the Commissioner to establish the fact that he did carry insurance as required. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Allegations Insufficient to Authorize Postponement of Posting. — Where petitioner did not allege that he was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, nor did he allege that the amount of the security required was excessive or that such security was not required by the terms of the statute and there were no allegations which if proved would entitle the petitioner to any relief, and the only relief requested by the petitioner was that the court postpone the posting of the security required by the Commissioner under this section, neither the Commissioner nor the court had the authority to grant this relief and a motion to dismiss was properly granted. Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

Applied in Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964); Carson v. Godwin, 269 N.C. 744, 153 S.E.2d 473 (1967); Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

Cited in Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970); State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970); Dildy v. Southeastern Fire Ins. Co., 13 N.C. App. 66, 185 S.E.2d 272 (1971).

§ 20-279.6. Further exceptions to requirement of security. — The requirements as to security and suspension in G.S. 20-279.5 shall not apply:

(1) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner;

(2) To the operator or the owner of a motor vehicle legally parked at the time of the accident;

(3) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was

parked by a person who had been operating such motor vehicle without such permission;

(4) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under G.S. 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, with respect to all claims for injuries or damages resulting from the accident;

(5) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under G.S. 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise be required to file security has in any manner settled the claims of the other persons involved in the accident and if the Commissioner determines that, considering the circumstances of the accident and the settlement, the purposes of this Article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. For the purpose of administering this subdivision, the Commissioner may consider a settlement made by an insurance company as the equivalent of a settlement made directly by the insured; nor

(6) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under G.S. 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that another person involved in the accident has been convicted by a court of competent jurisdiction of a crime involving the operation of a motor vehicle at the time of the accident, and if the Commissioner in his discretion determines, after considering the circumstances of the accident or the nature and the circumstances of the crime, that the purpose of this Article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. (1953, c. 1300, s. 6; 1955, c. 1152, ss. 9, 10.)

§ 20-279.6A. Minors. — In determining whether or not any of the exceptions set forth in G.S. 20-279.6 have been satisfied, in the case of accidents involving minors, the Commissioner may accept, for the purpose of this Article only, as valid releases on account of claims for injuries to minors or damage to the property of minors releases which have been executed by the parent of the minor having custody of the minor or by the guardian of the minor if there be one. In the case of an emancipated minor, the Commissioner may accept a release signed by or a settlement agreed upon by the minor without the approval of the parents of the minor. If in the opinion of the Commissioner the circumstances of the accident, the nature and extent of the injuries or damage, or any other circumstances make it advisable for the best protection of the interest of the minor, the Commissioner may decline to accept such releases or settlements and may require the approval of the superior court. (1955, c. 1152, s. 11.)

§ 20-279.7. Duration of suspension. — The license and nonresident's operating privilege suspended as provided in G.S. 20-279.5 shall remain so suspended and shall not be renewed nor shall any such license be issued to such person until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under G.S. 20-279.5;

(2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioner has been filed with him that during such period no action for damages arising out of the accident has been instituted; or

(3) Evidence satisfactory to the Commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision (4) of G.S. 20-279.6 or a settlement accepted by the Commissioner as provided in subdivision (5) of G.S. 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of G.S. 20-279.6; provided, however, in the event there shall be any default in the payment of any installment or sum under any duly acknowledged written agreement, then, upon notice of such default, the Commissioner shall forthwith suspend the license or nonresident's operating privilege of such person defaulting which shall not be restored unless and until:

a. Such person deposits and thereafter maintains security as required under G.S. 20-279.5 in such amount as the Commissioner may then determine; or

b. One year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this State. (1953, c. 1300, s. 7; 1955, c. 1152, s. 12.)

Applied in Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

§ 20-279.8. Application to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states. — (a) In case the operator or the owner of a motor vehicle involved in an accident within this State has no license, or is a nonresident, he shall not be allowed a license until he has complied with the requirements of this Article to the same extent that it would be necessary if, at the time of the accident, he had held a license.

(b) When a nonresident's operating privilege is suspended pursuant to G.S. 20-279.5 or 20-279.7, the Commissioner shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this section.

(c) Upon receipt of such certification that the operating privilege of a resident of this State has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioner to suspend a nonresident's operating privilege had the accident occurred in this State the Commissioner shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. (1953, c. 1300, s. 8.)

§ 20-279.9. Form and amount of security. — The security required under this Article shall be in such form and in such amount as the Commissioner may require but in no case in excess of the limits specified in G.S. 20-279.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Commissioner or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an

additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The Commissioner may reduce the amount of security ordered in any case if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of G.S. 20-279.10. (1953, c. 1300, s. 9.)

§ 20-279.10. Custody, disposition and return of security; escheat. — (a) Security deposited in compliance with the requirements of this Article shall be placed by the Commissioner in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subdivision (3) of G.S. 20-279.7, or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with subdivision (4) of G.S. 20-279.6, or a settlement accepted by the Commissioner as provided in subdivision (5) of G.S. 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of G.S. 20-279.6, or whenever, after the expiration of one (1) year from the date of the accident, or from the date of deposit of any security under subdivision (3) of G.S. 20-279.7, whichever is later, the Commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

(b) One year from the deposit of any security under the terms of this Article, the Commissioner shall notify the depositor thereof by registered mail addressed to his last known address that the depositor is entitled to a refund of the security upon giving reasonable evidence that no action at law for damages arising out of the accident in question is pending or that no judgment rendered in any such action remains unpaid. If, at the end of three years from the date of deposit, no claim therefor has been received, the Division shall notify the depositor thereof by registered mail and shall cause a notice to be posted at the courthouse door of the county in which is located the last known address of the depositor for a period of 60 days. Such notice shall contain the name of the depositor, his last known address, the date, amount and nature of the deposit, and shall state the conditions under which the deposit will be refunded. If, at the end of two years from the date of posting of such notice, no claim for the deposit has been received, the Commissioner shall certify such fact together with the facts of notice to the State Treasurer and the Treasurer shall turn such deposit over to the University of North Carolina as an escheat. (1953, c. 1300, s. 10; 1955, c. 1152, s. 13; 1967, c. 1227; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment substituted "Division" for "Department" in the second sentence of subsection (b).

§ 20-279.11. Matters not to be evidence in civil suits. — Neither the report required by G.S. 20-279.4, the action taken by the Commissioner pursuant to this Article, the findings, if any, of the Commissioner upon which such action is based, or the security filed as provided in this Article shall be referred to in any

§ 20-279.18. Alternate methods of giving proof. — Proof of financial responsibility when required under this Article with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(1) A certificate of insurance as provided in G.S. 20-279.19 or 20-279.20; or

(2) A bond as provided in G.S. 20-279.24; or

(3) A certificate of deposit of money or securities as provided in G.S. 20-279.25; or

(4) A certificate of self-insurance, as provided in G.S. 20-279.33, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. (1953, c. 1300, s. 18.)

Cited in Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972).

§ 20-279.19. Certificate of insurance as proof. — Proof of financial responsibility may be furnished by filing with the Commissioner the written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle. The Commissioner may require that certificates filed pursuant to this section be on a form approved by the Commissioner. (1953, c. 1300, s. 19; 1955, c. 1152, s. 16.)

Filing Does Not Estop Insurer from Denying Coverage. — The filing, as required by this section, does not estop an insurance carrier from thereafter denying coverage under the policy. Seaford v. Nationwide Mut. Ins. Co., 253 N.C. 719, 117 S.E.2d 733 (1961).

Cited in Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961); Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968); Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973).

§ 20-279.20. Certificate furnished by nonresident as proof. — (a) The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this Article, and the Commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State; and

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(c) The Commissioner may require that certificates and powers filed pursuant to this section be on forms approved by the Commissioner. (1953, c. 1300, s. 20; 1955, c. 1152, s. 17.)

Cited in Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 308 (1961); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973).

§ 20-279.21. "Motor vehicle liability policy" defined. — (a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident; and

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of G.S. 20-279.5, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; and provided that an insured shall be entitled to secure increased limits coverage of fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident if the policy of such insured carries liability limits of equal or greater amounts for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor

vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of five thousand dollars ($5,000) and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether such pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in such event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also

within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in such notice the time, date and place of such injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer such further reasonable information concerning the accident and the injury as the insurer shall request. If such forms are not so furnished within 15 days, the insured shall be deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of such injury or accident to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;
b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

and distributors at the time of its ratification, and to all such future franchises and contracts. (1955, c. 1243, s. 23.)

§ 20-308. Penalties. — Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1955, c. 1243, s. 24.)

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period. — (a) No self-propelled motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this Article, and certifies that he has such financial responsibility. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

(b) Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer, as these terms are defined and described in Article 9A, Chapter 20 of the General Statutes of North Carolina, as amended.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and the Division of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be reregistered in the name of the registered owner, spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Division, except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the registration of the vehicle, the separated spouse shall furnish the Division his or her affidavit and the affidavit of two other individuals stating that he or she is separated. As a condition precedent to the reregistration of the vehicle, the owner shall pay a restoration fee of fifteen dollars ($15.00) and the appropriate fee for a new registration plate. It shall be the duty of insurance companies, upon request of the Division, to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within 20 days may be considered by the Commissioner as acknowledgment that the information as submitted is correct.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Division of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this Article.

(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (d), the insurer shall forthwith notify the North Carolina Division of Motor Vehicles of such termination. Where the insurance policy is terminated by the insured, the insurer shall forthwith notify the Division of Motor Vehicles that such insurance policy has been terminated. The Division of Motor Vehicles, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within

15 days from date of notice given by the Division, certify to the Division that he has financial responsibility effective on or prior to the date of such cancellation or termination. Failure by the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and, unless the owner's registration plate has been surrendered to the Division of Motor Vehicles by surrender to an agent or representative of the Division of Motor Vehicles and so designated by the Commissioner of Motor Vehicles or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be registered in the name of the registered owner, spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Division, except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the registration of the vehicle, the owner shall pay a restoration fee of fifteen dollars ($15.00) and the appropriate fee for a new registration plate. Any person, firm or corporation failing to give notice of termination as required herein shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division of Motor Vehicles.

(f) The fees collected under this section and G.S. 20-311 shall be placed in the Highway Fund. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2; 1967, c. 822, ss. 1, 2; c. 857, ss. 1, 2; 1971, c. 477, ss. 1, 2; c. 924; 1975, c. 302; c. 348, ss. 1-3; c. 716, s. 5.)

Cross References. — As to Motor Vehicle Safety and Financial Responsibility Act of 1953, see §§ 20-279.1 to 20-279.39. As to notice of termination of policy required to be given to Commissioner of Motor Vehicles under § 20-310 before its amendment in 1963, see note to § 20-310.

Editor's Note. — The first 1975 amendment rewrote the first sentence of subsection (e), which formerly required 15 days' notice of termination or cancellation prior to the effective date thereof, substituted "forthwith" for "immediately" near the middle of the second sentence of subsection (e), substituted "registered" for "reregistered" in the fifth sentence and "registration" for "reregistration" in the sixth sentence of subsection (e) and added the last sentence of subsection (e).

The second 1975 amendment inserted "a restoration fee of fifteen dollars ($15.00) and" in the fourth sentence of subsection (c) and in the next-to-last sentence of subsection (e) and added subsection (f).

The third 1975 amendment substituted "Division" for "Department" throughout subsections (c), (d) and (e).

For case law survey on insurance, see 41 N.C.L. Rev. 484 (1963).

This Article is a remedial statute and will be liberally construed to carry out its beneficent purpose of providing compensation to those who have been injured by automobiles. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

The manifest purpose of this Article is to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and in respect of a motor vehicle liability policy to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. To bar recovery from the insurer on account of such policy violations would practically nullify the statute by making the enforcement of the rights of the person intended to be protected dependent upon the acts of the very person who caused the injury. Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

The manifest purpose of this Article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle. Perkins v. American Mut. Fire Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

The purpose of this Article is to assure the protection of liability insurance, or other type of established financial responsibility, up to the minimum amount specified in this Article, to persons injured by the negligent operation of a motor vehicle upon the highways of this State. To that end, the act makes it mandatory that the

AFFIRMATION OF RUTH SCHRENZEL, READ IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

COUNTRY WIDE INSURANCE COMPANY

Plaintiff

against

NIEVES RODRIGUEZ, an infant under the age of 14 years by ROSA RODRIGUEZ, her mother and natural guardian and ROSA RODRIGUEZ, and LOUIS PADILLA

Defendants

INDEX #03183/80

STATE OF NEW YORK

ss:

COUNTY OF KINGS

Ruth Schrenzel, an attorney duly admitted to practice Law in the Courts of the State of New York, affirms the truth of the following pursuant to the penalties of perjury:

I am a member of the firm of POKORNY, SCHRENZEL & POKORNY, the attorneys for the plaintiff, COUNTRY WIDE INSURANCE COMPANY, and am fully familiar with all of the facts and circumstances involved herein.

This affirmation is respectfully submitted in opposition to the instant application of defendant, NIEVES RODRIGUEZ, for summary judgment dismissing plaintiffs complaint and declaring and adjudging that COUNTRY WIDE INSURANCE COMPANY, provided $15,000 Automobile Liability coverage for the injuries sustained by said NIEVES RODRIGUEZ. Indeed, since summary judgment searches the record, plaintiff, COUNTRY WIDE INSURANCE COMPANY, requests summary judgment declaring and adjudging that at the time of the occurrence of the within accident that the maximum insurance coverage liability of COUNTRY WIDE

INSURANCE COMPANY, for the injuries sustained by the defendant was in the sum of $10,000.

Defendant, NIEVES RODRIGUEZ properly does not seek summary judgment concerning that portion of plaintiffs complaint relating to its rights against the defendant, LOUIS PADILLA, its insured.

Defendant is correct when he states there is no essential dispute as to the facts involved. Essentially the basic germane facts are as follows:

1) Plaintiff, COUNTRY WIDE INSURANCE COMPANY, issued a policy of insurance to defendant, LOUIS PADILLA, a New York State resident, in the State of New York.

2) That the stated limits contained in plaintiffs policy of insurance were in the sum of $10/20,000. prescribed by

Section 167 (2a) of the Insurance Law of the State of New York.

3) That defendant NIEVES RODRIGUEZ, at the time of the accident was a New York State resident.

4) Defendant, NIEVES RODRIGUEZ, on August 15, 1977 was a passenger in the PADILLA automobile, covered by the policy, and that the PADILLA automobile was on its way to a Florida destination on a temporary visit.

5) That while passing through the State of North Carolina such vehicle was involved in an accident with a vehicle owned by a North Carolina resident PAUL HILL.

6) That NIEVES RODRIGUEZ, commenced an action in the Supreme Court of the State of New York, County of Bronx, to recover damages for alleged personal

injuries claimed to have been sustained in such accident.

7) That such suit resulted in a total judgment in favor of NIEVES RODRIGUEZ, in the sum of $100,000. The jury having apportioned the respective negligence of PADILLA at 60% and HILL at 40%.

8) The companion cause of action of ROSA RODRIGUEZ, also a passenger in the PADILLA automobile, for personal injuries, resulted in a verdict against her in favor of both motorists.

9) That prior to trial plaintiff carrier herein, COUNTRY WIDE INSURANCE COMPANY, offered its entire policy limits, subject to judicial interpretation to settle the claim of NIEVES RODRIGUEZ, against its insured LOUIS PADILLA.

10) That plaintiff herein, COUNTRY WIDE INSURANCE COMPANY, claims and

contends that its maximum liability on behalf of its insured is in the sum of $10,000 and that defendant, NIEVES RODRIGUEZ claims that such maximum liability is in the sum of $15,000.

The case of MINDELL against TRAVELERS INDEMNITY COMPANY cited by the defendant, a report of which is annexed to his moving papers, clearly supports the contention of COUNTRY WIDE INSURANCE COMPANY and not the defendants. In an analagous situation the Court held that the Law of a foreign jurisdiction cannot supersede a written contract of insurance entered into between the insured, a New York State resident, and the insurance carriers in the State of New York. The Courts specifically states in the majority opinion, "no reason appearing why the Canadian Law is entitled to be given

effect to alter or override the insurance contract from which defendants liability derives, we conclude that the limit of coverage should be $10,000. as stated in the policy". In the cited case the Canadian Law called for minimum limits of $35,000.

Defendant herein, urges this Court that the Law applicable to this matter is now reversed because of Section 672 Subdivision 5 of the Insurance Law of the State of New York. It is respectfully submitted that this is not the case and that such provision does not relate to or affect the plaintiff carrier's liability to defendant, NIEVES RODRIGUEZ, under its policy of insurance.

Clearly the State of North Carolina, a foreign jurisdiction, cannot legislate or govern insurance contracts written in

the State of New York and involving New York State residents. Section 672 Subdivision 5 of the Insurance Law merely states:

> "every owner's policy of liability insurance issued in satisfaction of article six or eight of the Vehicle and Traffic Law shall also provide, when a motor vehicle covered by such policy is used or operated in any other State or in any Canadian Province, insurance coverage for such motor vehicle at least in the minimum amount required for such vehicle by the Laws of such other State or Canadian Province".

Such provision merely recognizes a foreign jurisdictions legitimate right to legislate in behalf of the interests of its residents. Clearly if the defendant had been a North Carolina resident at the time of the occurrence of the accident or the accident had involved a

North Carolina resident instead of defendant, then and only then, would Section 672(5) of the New York State Insurance Law apply. Clearly the State of North Carolina is, and can only be legitimately interested, in protecting the rights of its own residents injured in automobile accidents within its borders. It has no legitimate interest and cannot legislate the rights and liabilities of non-residents toward each other and certainly cannot alter or modify their written contracts entered into between them in their home State.

In the vent we followed defendants reasoning to its logical conclusion he might well have been in a situation in which he would be entitled to only $5,000 of insurance coverage although the involved policy, admittedly, in

writing, provides insurance coverage in the sum of $10,000.

The States of Louisiana, Massachusetts, Mississippi, Montana and Oklahoma provide for mandatory insurance coverage, in this situation, only in the sum $5,000. Such information is contained in a table of financial responsibility laws contained in "Bests Recommended Insurance Attorneys" and a copy thereof is hereto annexed made a part hereof and marked exhibit "A". Thus, but for the intervention of fate, plaintiff would be limited to the sum of $5,000 if we accepted his reasoning and misapplied Section 672(5) of the Insurance Law in conjunction with the foreign statute calling for only $5,000 insurance coverage. Clearly such result would be ridiculous and manifestly unjust.

The written contract would take precedence and carriers liability would be $10,000 and not $5,000.

Obviously the converse herein is true. Plaintiffs maximum liability is in the sum of $10,000. not in the sum of $15,000. Obviously Section 672 (5) of the Insurance Law merely recognizes and codifies the right of a foreign jurisdiction to protect its residents who are injured within its borders. It has no application to the situation at bar which does not involve a North Carolina resident, as an injured party.

WHEREFORE plaintiff COUNTRY WIDE INSURANCE COMPANY, respectfully requests that defendants instant application be denied in all respects and that plaintiff, COUNTRY WIDE INSURANCE COMPANY be granted summary judgment as requested,

together with such other and further relief as to this Court may deem just and proper together with the costs of this motion.

RUTH SCHRENZEL

February 13, 1980

NOTICE OF APPEAL TO THE APPELLATE DIVISION.

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

- -

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

-against-

NIEVES RODRIGUEZ, an Infant under the Age of 14 Years, by ROSA RODRIGUEZ, her Mother and Natural Guardian, and ROSA RODRIGUEZ and LOUIS PADILLA,

Defendants.

INDEX NO. 3183/80

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S I R S:

PLEASE TAKE NOTICE, that the plaintiff above-named, Country-Wide Insurance Company, hereby appeals to the Appellate Division of the Supreme Court, First Judicial Department, from the order of the Supreme Court, New York County, dated May 1, 1980, entered in the Office of the

Clerk of the County of New York on May 5, 1980, a copy of which order was served with notice of entry on May 6, 1980 and which order granted summary judgment to the defendants and directed judgment in their favor in the sum of $15,000 with interest and costs, and which order also denied plaintiff's cross-motion for summary judgment, upon the grounds that the said order and any judgment entered thereon are contrary to law and also, and not by way of limitation, impairs the obligation of contract as proscribed by Article I, Section 10 of the United States Constitution and the due process clause, Article I, Section 6, of the Constitution of the State of New York, and from each and every part of said order.

DATED: May 28, 1980

Yours, etc.,

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POKORNY
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11201
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TO: WEISS, MOLOD, BERKOWITZ &
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99 Park Avenue
New York, New York 10016

LOUIS PADILLA
771 Elsmire Place
Bronx, New York

NOTICE OF APPEAL TO THE COURT OF APPEALS.

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

- -

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

-against-

NIEVES RODRIGUEZ, an Infant under the Age of 14 years, by ROSA RODRIGUEZ, her Mother and Natural Guardian, and ROSA RODRIGUEZ and LOUIS PADILLA,

Defendants.

INDEX NO. 3183/80

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S I R S:

PLEASE TAKE NOTICE that the Plaintiff appeals to the Court of Appeals of the State of New York from a final order of the Appellate Division, First Judicial Department entered in the Office of the Clerk of said Appellate Division on the 9th day of April, 1981, and which

Order was served with notice of entry on the attorneys for the Plaintiff on the 21st day of April, 1981 and which Order affirmed the Order and Judgment of the Supreme Court, New York County in favor of the Defendant-Respondent in this action entered in the Office of the Clerk of New York County on May 5, 1980, which was a final Order granting summary judgment to the Respondent and a final declaratory judgment declaring that a policy of liability insurance written pursuant to the Statute Law of New York nevertheless imposes liability in a greater amount pursuant to North Carolina Law because regardless of the fact that the automobile was registered and insured in New York, the owner and injured passenger were residents of New York, even though the accident occurred while

passing through North Carolina; and from which Order and Judgment Justices, Markewich and Silverman dissented on questions of law in favor of appellant and would vote to reverse the Order and Judgment of the Supreme Court on the Law.

PLEASE TAKE FURTHER NOTICE that the Plaintiff appeals from each and every part of the Order of the Appellate Division and from the whole thereof including, and not by way of limitation, the position that the said decision appealed from impairs the obligation of contract as proscribed by Article 1 Section 10 of the United States Constitution and the due process clause, Article 1 Section 6 of the Constitution of the State of New York both of which questions were raised in the Courts below.

DATED: May 11, 1981

Yours, etc.

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TO: CLERK OF THE COUNTY OF NEW YORK
60 Center Street
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Attorneys for Defendants-Respondents
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9. Judicial review. No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this section.

Added L.1969, c. 1074, § 2, eff. July 1, 1970.

Historical Note

Effective date of L.1969, c. 1074; application. See note preceding section 225.

ARTICLE 3—EXEMPTION OF NON-RESIDENT OWNERS AND OPERATORS

Sec.

250. Exemption of non-resident owners and operators.
251. Exemption of motor vehicles owned by military personnel.
252. Exemption of certain in-transit vehicle registrations.
253. Service of summons on non-residents.
254. Service of summons on residents who depart from state and on residents' executors or administrators who are nonresidents or who depart from state.

§ 250. Exemption of non-resident owners and operators

1. Except as otherwise provided in subdivision three of this section, the provisions of this chapter relative to the registration and equipment of motor vehicles, motorcycles and trailers and the display of registration numbers shall not apply to a motor vehicle, motorcycle or trailer owned by a non-resident of this state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration and equipment of such motor vehicle, motorcycle or trailer, as the case may be, and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby. The provisions of this subdivision, however, shall be operative as to a motor vehicle, motorcycle or trailer owned by a non-resident of this state only to the extent that under the laws of the foreign country, state, territory or federal district of his residence like exemptions and privileges are granted to motor vehicles, motorcycles and trailers duly registered under the laws of and owned by residents of this state.

A person, firm, association or corporation having a place of business in a foreign country, state, territory or federal district

and owning a motor vehicle, motorcycle or trailer used in connection with and garaged at such place of business which such owner is compelled to register in such foreign jurisdiction shall be deemed a resident of such foreign jurisdiction and a non-resident of this state within the meaning of this subdivision for the purpose of enjoying the privileges of this subdivision with respect to such vehicle.

In case a non-resident becomes a resident of this state, he shall be entitled for a period not exceeding thirty days from the date he becomes a resident to the same exemption from registering his vehicles in this state as he would have enjoyed had he remained a non-resident.

2. A person of the age of sixteen years and upwards who shall be a nonresident of this state, and a resident of a state, territory, federal district or foreign country having laws, with which such person has complied, which require such person, in order to operate a motor vehicle or motorcycle therein, to be licensed, may operate or drive a motor vehicle or motorcycle on the public highways of this state without being so licensed under this chapter, provided, however, that the recognition granted under this subdivision shall, with respect to a person under the age of eighteen years, only permit the operation of a motor vehicle or motorcycle in this state in accordance with the same restrictions imposed upon New York residents operating or driving motor vehicles or motorcycles with junior operator licenses under subdivision b of section five hundred one [1] of this Chapter. A nonresident entitled to operate a motor vehicle or motorcycle as herein provided who shall become a resident of this state may operate or drive a motor vehicle or motorcycle on the public highways of this state for a period not exceeding sixty days from the date he becomes a resident pending the obtaining of a license to operate such motor vehicle or motorcycle in this state.

3. (a) The exemptions provided in subdivisions one and four of this section shall not apply to a motor vehicle, motorcycle or trailer, other than a semitrailer drawn by a tractor registered in this state which is operated on any public highway of this state to transport persons or property for hire or profit from one point in this state to another point in this state or which is operated in doing any work performed under a contract for a public improvement to which the state, a municipal corporation, a school district or a commission appointed pursuant to law is a party, except to transport machinery, tools or other plant equipment to be used in the performance of such a contract; pro-